Supreme Court, U.S.
FILED

(1)

No. 03- 03-973 JAN 5 - 2004

IN THE OFFICE OF THE CLERK

Supreme Court of the United States

PUFFER-HEFTY SCHOOL DISTRICT NO. 69 AND BRUCE WEEKS,
Petitioners,

v.

DUPAGE REGIONAL BOARD OF SCHOOL TRUSTEES OF DUPAGE COUNTY, ILLINOIS AND ITS MEMBERS, R. DONALD MAHLKE, LAURA POLLASTRINI, JOSEPH PATRICELLI, GLORIA K. SCIGOUSKY, MARTHA ROGERS, DEBRA OLSON, GWENDOLYN L. BATES, AND BERARDO J. DESIMONE, REGIONAL SUPERINTENDENT OF THE SCHOOLS OF DUPAGE COUNTY AND EX-OFFICIO SECRETARY OF THE REGIONAL BOARD OF SCHOOL TRUSTEES FOR DUPAGE COUNTY, THE COMMITTEE OF TEN, AND ITS MEMBERS, FRANCES D. HOLBROOK, DAVID J. SCHILLING, DUSHAN BUDIMIR, DEBRA LYNN WESLEY, WILLIAM FEHRMANN, EUNICE GIAMMONA, LORI BUDIMIR, MICHAEL WESLEY, HUGO MONTENEGRO, THERESA BREZINSKI, AND SCHOOL DISTRICT NO. 58,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT

PETITION FOR A WRIT OF CERTIORARI

PATRICIA J. WHITTEN
Counsel of Record
J. TODD FAULKNER
ANTHONY D. D'AMATO
KRISTI L. BOWMAN
FRANCZEK SULLIVAN P.C.
Suite 3400
300 South Wacker Drive
Chicago, Illinois 60606
(312) 986-0300
Counsel for Petitioners

184878

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1. Did the Illinois Appellate Court commit reversible error within its improper application of the rational basis test rather than a strict scrutiny analysis in its evaluation of 105 Ill. Comp. Stat. 5/7-2a(b)?

2. Did the Illinois Appellate Court commit reversible error within its holding that the dissolution and subsequent annexation of Puffer-Hefty School District No. 69 by petition alone and without voter approval at an election was permissible pursuant to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution?

TABLE OF CONTENTS

	Page
Questions Presented	i
Table of Contents	ii
Table of Cited Authorities	iv
Table of Appendices	viii
Opinions Below	1
Statement of Jurisdiction	1
Constitutional and Statutory Provisions Involved	2
Statement of the Case	15
Reasons for Granting the Petition	17
I. The Illinois Appellate Court Committed Reversible Error When it Reviewed Section 7-2a(b) of the Illinois School Code Under the Rational Basis Test Rather Than the Strict Scrutiny Analysis.	20
II. The Illinois Appellate Court Committed Reversible Error When It Held Section 7-2a(b), Which Discriminates Among Registered Voters When Determining the Dissolution and Annexation of a School District, Was Constitutional Because Section 7-2a(b) Does Not Survive a Strict Scrutiny Analysis.	23

Contents

Page

III. Alternatively, the Illinois Appellate Court Committed Reversible Error When it Held Section 7-2a(b), Which Discriminates Among Registered Voters When Determining the Dissolution and Annexation of a School District, Survives the Rational Basis Test. ... 25

Conclusion 29

TABLE OF CITED AUTHORITIES

Cases: *Page*

Bullock v. Carter, 405 U.S. 134 (1972) 24

Burdick v. Takushi, 504 U.S. 428 (1992) 21, 23

Bush v. Gore, 531 U.S. 98 (2000) 23

Carrington v. Rash, 280 U.S. 89 (1965) 24

Davis v. Beason, 133 U.S. 333 (1890) 21

DuBois v. Gibbons, 118 N.E.2d 295 (Ill. App. Ct. 1954) 26

Evans v. Cornman, 398 U.S. 419 (1970) 24

Gorgees v. Daley, 628 N.E.2d 721 (Ill. App. Ct. 1993) 26, 27

Harper v. Virginia State Board of Elections, 383 U.S. 663 (1966) 24

Holbrook v. Regional Board of School Trustees, 713 N.E.2d 228 (Ill. App. Ct. 1999) 16

Kramer v. Union Free School District No. 15, 395 U.S. 621 (1969) 24

Latham v. Board of Education of City of Chicago, 201 N.E.2d 111 (Ill. 1964) 21, 27, 29

Cited Authorities

Page

Lee v. Retirement Board of Policemen's Annuity and Benefit Fund, 317 N.E.2d 758 (Ill. App. Ct. 1974) 26

Massachusetts Board of Retirement. v. Murgia, 427 U.S. 307 (1976) 23

McDonald v. Board of Election Commission, 394 U.S. 802 (1969) 24

Orr v. Edgar, 698 N.E.2d 560 (App. Ct. Ill. 1998) ... 21

People v. Deatherage, 81 N.E.2d 581 (Ill. 1948) .. 21, 29

People v. Palkes, 288 N.E.2d 469 (Ill. 1972) 26

Puffer-Hefty School District No. 69 v. Regional Board of School Trustees, 789 N.E.2d 800 (Ill. App. Ct. 2003) ..... *passim*

Puffer-Hefty School District No. 69 v. Regional Board of School Trustees, 01 MR 000149 16

Romer v. Evans, 517 U.S. 620 (1996) 21

Spaulding v. Illinois Community College Board, 356 N.E.2d 339 (Ill. 1976). 21, 29

Starnawski v. License Appeal Commission, 428 N.E.2d 1102 (Ill. App. Ct. 1981) 26

Cited Authorities

Page

Tashjian v. Republican Party of Conn., 479 U.S. 208 (1986) 21

Walgreen v. Illinois Liquor Control Commission., 488 N.E.2d 980 (Ill. 1986) 21

Wesberry v. Sanders, 376 U.S. 1 (1964) 21

Constitutional Provisions:

United States Constitution, Amendment XIV 2, 16, 19, 24

Statutes:

28 U.S.C. § 1257(a) 1

28 U.S.C. § 2403(b) 17

10 Ill. Comp. Stat. 5/2A 25

105 Ill. Comp. Stat. 5/7-1 .....2, 15, 28

105 Ill. Comp. Stat. 5/7-2 .....6, 15, 28

105 Ill. Comp. Stat. 5/7-2a ..... *passim*

105 Ill. Comp. Stat. 5/7-7 ..... 11, 15

105 Ill. Comp. Stat. 5/7-11 11

Cited Authorities

Page

Other Authorities:

National Center for Education Statistics, Common Core of Data, *Overview of Public Elementary and Secondary Schools and Districts: School Year 2001-2002* (May 2003) 18

Cecil J. Picard, Louisiana State Superintendent of Education, "Small School Districts and Economies of Scale" (May 14, 2003) 18

National Governors Association, *The State Fiscal Crisis* (Feb. 22, 2003) 18

TABLE OF APPENDICES

Page

Appendix A — Opinion Of The Appellate Court Of Illinois, Second District Dated April 25, 2003 .. 1a

Appendix B — Memorandum Opinion And Order Of The Circuit Court Of The Eighteenth Judicial District, Dupage County, Illinois Entered January 25, 2002 ..... 32a

Appendix C — Relevant Docket Entry Dated Tuesday, October 7, 2003 ..... 63a

Appendix D — Administrative Decision Of The Regional Board Of School Trustees, Dupage County Dated February 22, 2001 ..... 64a

The Plaintiffs-Petitioners, Puffer-Hefty School District No. 69 and Bruce Weeks, petition for a writ of certiorari to review the judgment of the Illinois Appellate Court in this case.

OPINIONS BELOW

The decision of the Illinois Appellate Court is reported at 789 N.E.2d 800 (Ill. App. Ct. 2003) and is reprinted at pages 1a-31a of the appendix. The decision of the Circuit Court of DuPage County is unreported and is reprinted at pages 32a-62a of the appendix. The decision of the Regional Board of School Trustees is unreported and is reprinted at pages 64a-70a of the appendix.

STATEMENT OF JURISDICTION

The order of the Illinois Supreme Court issued on October 7, 2003, denying Plaintiffs-Petitioners' request to review the decision of the Illinois Appellate Court is unreported and is reprinted at page 63a of the appendix to this petition. Because this case presents a Constitutional question, the jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Illinois School Code, 105 Ill. Comp. Stat. 5/7-1, provides:

> (a) School district boundaries lying entirely within any educational service region may be changed by detachment, annexation, division or dissolution or any combination thereof by the regional board of school trustees of such region, or by the State Superintendent of Education as provided in subsection (1) of Section 7-6, when petitioned by the boards of each district affected or by a majority of the registered voters in each district affected or by two-thirds of the registered voters in any territory proposed to be detached from one or more districts or in each of one or more districts proposed to be annexed to another district. Registered voters shall be determined by

the official voter registration lists as of the date the petition is filed. No signatures shall be added after the date the petition is filed. If there are no registered voters within the territory proposed to be detached from one or more districts, then the petition may be signed by all of the owners of record of the real estate of the territory. Notwithstanding any other provisions of this Article, if pursuant to a petition filed under this subsection all of the territory of a school district is to be annexed to another school district, any action by the regional board of school trustees or State Superintendent of Education in granting or approving the petition and any change in school district boundaries pursuant to that action is subject to and the change in school district boundaries shall not be made except upon approval at a regular scheduled election, in the manner provided by Section 7-7.7, of a proposition for the annexation of all of the territory of that school district to the other school district.

Each page of the circulated petition shall include the full prayer of the petition, and each signature contained therein shall match the official signature and address of the registered voters as recorded in the office of the election authority having jurisdiction over the county. Each petitioner shall also record the date of his signing. Each page of the petition shall be signed by a circulator who has witnessed the signature of each petitioner on that page. The length of time for signatures to be

valid, before filing of the petition, shall not exceed 6 months.

Where there is only one school building in an approved operating district, the building and building site may not be included in any detachment proceeding unless petitioned by two-thirds of the registered voters within the entire district wherein the school is located.

(b) Any elementary or high school district with 100 or more of its students residing upon territory located entirely within a military base or installation operated and maintained by the government of the United States, or any unit school district or any combination of the above mentioned districts with 300 or more of its students residing upon territory located entirely within a military base or installation operated and maintained by the government of the United States, shall, upon the filing with the regional board of school trustees of a petition adopted by resolution of the board of education or a petition signed by a majority of the registered voters residing upon such military base or installation, have all of the territory lying entirely within such military base or installation detached from such school district, and a new school district comprised of such territory shall be created. The petition shall be filed with and decided solely by the regional board of school trustees of the region in which the regional superintendent of schools has supervision of the school district affected. The regional board of school trustees

shall have no authority to deny the detachment and creation of a new school district requested in a proper petition filed under this subsection. This subsection shall apply only to those school districts having a population of not fewer than 1,000 and not more than 500,000 residents, as ascertained by any special or general census.

The new school district shall tuition its students to the same districts that its students were previously attending and the districts from which the new district was detached shall continue to educate the students from the new district, until the federal government provides other arrangements. The federal government shall pay for the education of such children as required by Section 6 of Public Law 81-874.

If a school district created under this subsection (b) has not elected a school board and has not become operational within 2 years after the date of detachment, then this district is automatically dissolved and the territory of this district reverts to the school district from which the territory was detached or any successor district thereto. Any school district created under this subsection (b) on or before September 1, 1996 that has not elected a school board and has not been operational since September 1, 1996 is automatically dissolved on the effective date of this amendatory Act of 1999, and on this date the territory of this district reverts to the school district from which the territory was detached. For the automatic dissolution of a school district

> created under this subsection (b), the regional superintendent of schools who has supervision of the school district from which the territory was detached shall certify to the regional board of school trustees that the school district created under this subsection (b) has been automatically dissolved.

The Illinois School Code, 105 Ill. Comp. Stat. 5/7-2 provides:

> Districts in two or more counties; Change of boundaries. Boundaries of existing school districts lying within two or more counties may be changed by detachment, annexation, division, dissolution or any combination thereof by the concurrent action of, taken following a joint hearing before, the regional boards of school trustees of each region affected. For purposes of this Section and Section 7-6, an educational service region shall be deemed to be a region affected if any portion of the territory which the petition seeks to have detached from any school district is located in the region. The petition may be by the boards of each district affected, or by a majority of the legal voters residing in each district affected, or by two-thirds of the legal voters residing in any territory proposed to be detached from one or more districts or in each of one or more districts proposed to be annexed to another district. The original petition shall be filed with the regional board of school trustees of the region in which the territory being detached is located or if territory is being detached from more than one region then the petition shall

be filed with the regional board of school trustees of the region in which the regional superintendent has supervision over the greatest portion of such territory. A certified true copy of the petition shall be filed with the regional board of school trustees of each other region affected. Notwithstanding any other provisions of this Article, if pursuant to a petition filed under this Section all of the territory of a school district is to be annexed to another school district, any action by the regional boards of school trustees in granting the petition and any changes in school district boundaries pursuant to that action is subject to and the change in school district boundaries shall not be made except upon approval at a regular scheduled election, in the manner provided by Section 7-7.7, of a proposition for the annexation of all of the territory of that school district to the other school district.

The regional board of school trustees in whose region the joint hearing on the original petition is conducted shall send a certified true copy of the transcript of the hearing to each other region affected. If there are no legal voters residing within the territory proposed to be detached from one or more districts, then the petition may be signed by all of the owners of record of the real estate of the territory. The annexing district is that district to which territory is proposed to be added.

Where there is only one school building in an approved operating district, the building and building site may not be included in any

> detachment proceeding unless petitioned by two-thirds of the eligible voters within the entire district wherein the school is located.
>
> After September 23, 1983, no petition shall be filed under Sections 7-1 and 7-2 to form a new school district under this Article except that such a petition may be filed under Section 7-1 to form a new school district where the boundaries of such new school district lie entirely within the boundaries of a military base or installation operated and maintained by the government of the United States.

The Illinois School Code, 105 Ill. Comp. Stat. 5/7-2a, provides:

> (a) Except as provided in subsection (b) of this Section, any petition for dissolution filed under this Article must specify the school district or districts to which all of the territory of the district proposed to be dissolved will be annexed. Any petition for dissolution may be made by the board of education of the district or a majority of the legal voters residing in the district proposed to be dissolved. No petition from any other district affected by the proposed dissolution shall be required.
>
> (b) Any school district with a population of less than 5,000 residents shall be dissolved and its territory annexed as provided in Section 7-11 by the regional board of school trustees upon the filing with the regional board of school trustees

of a petition adopted by resolution of the board of education or a petition signed by a majority of the registered voters of the district seeking such dissolution. No petition shall be adopted or signed under this subsection until the board of education or the petitioners, as the case may be, shall have given at least 10 days' notice to be published once in a newspaper having general circulation in the district and shall have conducted a public informational meeting to inform the residents of the district of the proposed dissolution and to answer questions concerning the proposed dissolution. The petition shall be filed with and decided solely by the regional board of school trustees of the region in which the regional superintendent of schools has supervision of the school district being dissolved. The regional board of school trustees shall not act on a petition filed by a board of education if within 45 days after giving notice of the hearing required under Section 7-11 a petition in opposition to the petition of the board to dissolve, signed by a majority of the registered voters of the district, is filed with the regional board of school trustees. The regional board of school trustees shall have no authority to deny dissolution requested in a proper petition for dissolution filed under this subsection (b), but shall exercise its discretion in accordance with Section 7-11 on the issue of annexing the territory of a district being dissolved, giving consideration to but not being bound by the wishes expressed by the residents of the various school districts that may be affected by such annexation.

When dissolution and annexation become effective for purposes of administration and attendance as determined pursuant to Section 7-11, the positions of teachers in contractual continued service in the district being dissolved are transferred to an annexing district or to annexing districts pursuant to the provisions of Section 24-12 relative to teachers having contractual continued service status whose positions are transferred from one board to the control of a different board, and those said provisions of Section 24-12 shall apply to said transferred teachers. In the event that the territory is added to 2 or more districts, the decision on which positions shall be transferred to which annexing districts shall be made giving consideration to the proportionate percent of pupils transferred and the annexing districts' staffing needs, and the transfer of specific individuals into such positions shall be based upon the request of those teachers in order of seniority in the dissolving district. The contractual continued service status of any teacher thereby transferred to an annexing district is not lost and the different board is subject to this Act with respect to such transferred teacher in the same manner as if such teacher was that district's employee and had been its employee during the time such teacher was actually employed by the board of the dissolving district from which the position was transferred.

The Illinois School Code, 105 Ill. Comp. Stat. 5/7-7.7 provides:

> Passage requirements. The proposition for the annexation of all of the territory of one or more school districts to another school district shall be submitted to the voters of the annexing district and the voters of each district all of the territory of which is to be annexed to the annexing district, and if a majority of the voters in each such district who vote on the proposition vote in favor of the proposition, the proposition shall be deemed to have passed.

The Illinois School Code, 105 Ill. Comp. Stat. 5/7-11 provides:

> If any school district has become dissolved as provided in Section 5-32, or if a petition for dissolution is filed under subsection (b) of Section 7-2a, the regional board of school trustees shall attach the territory of such dissolved district to one or more districts and, if the territory is added to 2 or more districts, shall divide the property of the dissolved district among the districts to which its territory is added, in the manner provided for the division of property in case of the organization of a new district from a part of another district. The regional board of school trustees of the region in which the regional superintendent has supervision over the school district that is dissolved shall have all power necessary to annex the territory of the dissolved district as provided in this Section, including the power to attach the

territory to a school district under the supervision of the regional superintendent of another educational service region. The annexation of the territory of a dissolved school district under this Section shall entitle the school districts involved in the annexation to payments from the State Board of Education under subsection (A)(5)(m) of Section 18-8 or subsection (I) of Section 18-8.05 and under Sections 18-8.2 and 18-8.3 in the same manner and to the same extent authorized in the case of other annexations under this Article. Other provisions of this Article 7 of The School Code shall apply to and govern dissolutions and annexations under this Section and Section 7-2a, except that it is the intent of the General Assembly that in the case of conflict the provisions of this Section and Section 7-2a shall control over the other provisions of this Article.

The regional board of school trustees shall give notice of a hearing, to be held not less than 50 days nor more than 70 days after a school district is dissolved under Section 5-32 or a petition is filed under subsection (b) of Section 7-2a, on the disposition of the territory of such school district by publishing a notice thereof at least once each week for 2 successive weeks in at least one newspaper having a general circulation within the area of the territory involved. At such hearing, the regional board of school trustees shall hear evidence as to the school needs and conditions of the territory and of the area within and adjacent thereto, and shall take into consideration the educational welfare of the pupils of the territory

and the normal high school attendance pattern of the children. In the case of an elementary school district if all the eighth grade graduates of such district customarily attend high school in the same high school district, the regional board of school trustees shall, unless it be impossible because of the restrictions of a special charter district, annex the territory of the district to a contiguous elementary school district whose eighth grade graduates customarily attend that high school, and that has an elementary school building nearest to the center of the territory to be annexed, but if such eighth grade graduates customarily attend more than one high school the regional board of school trustees shall determine the attendance pattern of such graduates and divide the territory of the district among the contiguous elementary districts whose graduates attend the same respective high schools.

The decision of the regional board of school trustees in such matter shall be issued within 10 days after the conclusion of the hearing and deemed an "administrative decision" as defined in Section 3-101 of the Code of Civil Procedure and any resident who appears at the hearing or any petitioner may within 10 days after a copy of the decision sought to be reviewed was served by registered mail upon the party affected thereby file a complaint for the judicial review of such decision in accordance with the "Administrative Review Law", and all amendments and modifications thereof and the rules adopted pursuant thereto. The commencement of any

action for review shall operate as a stay of enforcement, and no further proceedings shall be had until final disposition of such review. The final decision of the regional board of school trustees or of any court upon judicial review shall become effective under Section 7-9 in the case of a petition for dissolution filed under subsection (b) of Section 7-2a, and a final decision shall become effective immediately following the date no further appeal is allowable in the case of a district dissolved under Section 5-32.

Notwithstanding the foregoing provisions of this Section or any other provision of law to the contrary, the school board of the Mt. Morris School District is authorized to donate to the City of Mount Morris, Illinois the school building and other real property used as a school site by the Mt. Morris School District at the time of its dissolution, by appropriate resolution adopted by the school board of the district prior to the dissolution of the district; and upon the adoption of a resolution by the school board donating the school building and school site to the City of Mount Morris, Illinois as authorized by this Section, the regional board of school trustees or other school officials holding legal title to the school building and school site so donated shall immediately convey the same to the City of Mt. Morris, Illinois.

STATEMENT OF THE CASE

On July 25, 1997, registered voters in Puffer-Hefty School District No. 69 (hereinafter, "Puffer-Hefty"), filed a petition with the DuPage County Regional Board of School Trustees (hereinafter, "Regional Board"), to dissolve Puffer-Hefty and subsequently annex it in accordance with the procedure provided in the Illinois School Code. *Puffer-Hefty Sch. Dist. No. 69 v. Regional Bd. of Sch. Trustees*, 789 N.E.2d 800, 805 (Ill. App. Ct. 2003). The parties stipulated the petition contained 1,101 valid signatures. *Id.*

The generally applicable provisions of the Illinois School Code allow a school district to be dissolved and annexed only after the proposed dissolution and annexation are ratified during regularly scheduled elections in both of the affected school districts. 105 Ill. Comp. Stat. 5/7-1, 7-2, 7-7 (2003). Because Puffer-Hefty has less than 5,000 residents, it can be dissolved and subsequently annexed by petition alone without approval by the voters at an election. 105 Ill. Comp. Stat. 5/7-2a(b) (2003) (student enrollment is irrelevant to the application of this provision). Section 7-2a(b) of the Illinois School Code (hereinafter, "Section 7-2a(b)") provides in pertinent part:

> Any school district with a population of less than 5,000 residents shall be dissolved and its territory annexed . . . upon the filing of a petition with the regional board of school trustees . . . signed by a majority of the registered voters of the district seeking such dissolution.

105 Ill. Comp. Stat. 5/7-2a(b) (2003).

The Regional Board denied the July 25, 1997 petition as an impermissible successive petition filed within two years of an earlier procedurally deficient petition that sought the same outcome. *Puffer-Hefty*, 789 N.E.2d at 805-06. On administrative review, the Circuit Court of DuPage County determined that the July 25, 1997 petition was not barred and the Illinois Appellate Court affirmed this conclusion. *See generally Holbrook v. Regional Bd. of Sch. Trustees*, 713 N.E.2d 228 (Ill. App. Ct. 1999). The Regional Board then conducted additional hearings and, in 2000, recognized the dissolution of Puffer-Hefty by petition and ordered Puffer-Hefty to be annexed to Downers Grove School District No. 58 (hereinafter, "School District 58"). *Puffer-Hefty*, 789 N.E.2d at 806.

On March 5, 2001, Puffer-Hefty and Bruce Weeks, a registered voter and resident of Puffer-Hefty, filed a Complaint in the Circuit Court of DuPage County, Illinois seeking, in part, a declaratory judgment that Section 7-2a(b) violated the Equal Protection Clause of the Fourteenth Amendment because of the manner in which it discriminated among registered voters. *Id.* at 807; U.S. Const., amend. XIV. On January 25, 2002, the Circuit Court affirmed the Regional Board's decision to dissolve Puffer-Hefty, but it declined to rule on the constitutional validity of Section 7-2a(b). *Puffer-Hefty Sch. Dist. No. 69 v. Regional Bd. of Sch. Trustees*, No. 01 MR 000149 at 20 (Cir. Ct. Jan. 25, 2002). On appeal, the Illinois Appellate Court for the Second District, in a case of first impression, analyzed Section 7-2a(b) under the rational basis test and held that Section 7-2a(b) did not violate the Equal Protection Clause of the Fourteenth Amendment. *Puffer-Hefty*, 789 N.E.2d at 806, 809-10 (portions of this decision are non-publishable under Illinois Supreme Court Rule 23); U.S. Const., amend. XIV. In pertinent part, the

Illinois Appellate Court concluded that Section 7-2a(b), which provides for the dissolution and annexation of a school district with less than 5,000 residents by petition alone, "provides for a method to bring the voting booth to each [voter's] home[] in the form of a petition circulation and signing." *Id.* at 809. The Illinois Appellate Court did not certify to the Illinois Attorney General that the constitutionality of Section 7-2a(b) was drawn into question. *See* 28 U.S.C. § 2403(b). (Because 28 U.S.C. § 2403(b) may apply to this case, this document will be served on the Illinois Attorney General.) The Illinois Supreme Court denied Puffer-Hefty's request that it review and reverse the Illinois Appellate Court's decision. *Puffer-Hefty Sch. Dist. No. 69 v. Regional Bd. of Sch. Trustees*, WL 22299276 (Oct. 7, 2003).

Puffer-Hefty now petitions this Court to grant a writ of certiorari to review whether the Illinois Appellate Court (i) erroneously selected the rational basis test rather than the strict scrutiny analysis to evaluate the constitutionality of Section 7-2a(b), and (ii) incorrectly held that the dissolution of Puffer-Hefty by petition alone and without approval by registered voters at an election was constitutional.

REASONS FOR GRANTING THE PETITION

The Illinois statutory framework permits some voters but not others to vote at an election on the dissolution and subsequent annexation of school districts. This framework effectively denies the right to vote to a class of voters based purely on the population of the school district in which they live. In violation of the Equal Protection Clause, this scheme has operated to deny registered voters in Puffer-Hefty, like Plaintiff Bruce Weeks, and in School District 58 the franchise and also to subject Puffer-Hefty to a dissolution and

annexation scheme distinct from that protecting school districts with 5,000 or more residents. Accordingly, registered voters in Puffer-Hefty and in School District 58 were not permitted to vote about this issue of central importance to any local community: the education of their own children.

The issues raised in the instant case are of national importance, although the existence and therefore the dissolution of smaller school districts is particularly germane to Illinois. During the 2001-2002 school year, Illinois' public schools enrolled 4.3% of the nation's elementary and secondary students, yet Illinois had 893 public school districts—the third highest number in the nation. *See* National Center for Education Statistics, Common Core of Data, *Overview of Public Elementary and Secondary Schools and Districts: School Year 2001-2002*, 6-7, 12-13 (May 2003), *available at:* http://nces.ed.gov/pubs2003/2003411.pdf. (In 2001-2002, only California and Texas had a higher number of public school districts, yet together these two states enrolled over one-fifth of the nation's public school students. *Id.*). As a result of these circumstances, Illinois has a disproportionately high number of small school districts—including Puffer-Hefty—that are likely to be affected by the type of statutory scheme the Illinois General Assembly has adopted. However, because of state and local governmental budget constraints, school district consolidation is becoming an increasingly important public policy issue across the nation. *See, e.g.*, Cecil J. Picard, Louisiana State Superintendent of Education, "Small School Districts and Economies of Scale" (May 14, 2003) *available at:* http://www.louisianaschools.net/lde/uploads/3475.pdf; National Governors Association, *The State Fiscal Crisis*, (Feb. 22, 2003), *available at:* http://www. nga.org/nga/ legislative Update 1,1169,C_ISSUE_BRIEF^D_5080,00.

html. Other states are likely to be addressing the manner in which they permit the dissolution and annexation of school districts. As state legislatures address the dissolution and consolidation of school districts, it is important that the voters of smaller school districts in Illinois and throughout the nation not be denied the right to vote in violation of the Equal Protection Clause of the Fourteenth Amendment. A community should not be deprived of the opportunity to deliberate and vote about matters of educational policy as essential as the dissolution and subsequent annexation of a school district simply because of its small population.

The central error in the Illinois Appellate Court's analysis of Section 7-2a(b) is the misconception that this statute, which provides for the dissolution and annexation of a school district with less than 5,000 residents by petition alone, "provides for a method to bring the voting booth to each [voter's] home[] in the form of a petition circulation and signing." *Puffer-Hefty*, 789 N.E.2d at 809. When the act of signing a petition is viewed as equivalent to exercising the fundamental right to vote, what should be a private choice becomes a matter of public record. In short, the voters of Puffer-Hefty were deprived of the secrecy of the voting booth and, as a result, Puffer-Hefty was subject to a fundamentally flawed process of dissolution and annexation to which school districts with a resident population greater than 5,000 are not subject. Whether reviewed under the strict scrutiny or rational basis analysis, this result reached by the Illinois Appellate Court is in conflict with the Constitution.

I. The Illinois Appellate Court Committed Reversible Error When it Reviewed Section 7-2a(b) of the Illinois School Code Under the Rational Basis Test Rather Than the Strict Scrutiny Analysis.

The Illinois Appellate Court erroneously concluded that because Section 7-2a(b) merely regulates the manner of voting, it should be evaluated under the rational basis test. To the contrary, Section 7-2a(b) must be evaluated under strict scrutiny because it denies a class of registered voters the franchise based on the population of the school district in which they reside, and also because it denies school districts with a population of less than 5,000 residents this process.

The relevant portion of the Illinois Appellate Court's decision reads:

> In the present case, we determine that section 7-2a(b) of the School Code does not infringe upon the right to vote. Rather, the statute affects the manner in which citizens of Puffer-Hefty exercise their right to vote. The statute does not prohibit those citizens from voting to maintain or dissolve their school district. Rather, it provides for a method to bring the voting booth to each of their homes in the form of a petition circulation and signing. Each registered voter received notice by publication of a public informational meeting concerning the dissolution. Each registered voter of Puffer-Hefty still had the right to cast a decision on whether to maintain or dissolve Puffer-Hefty. Section 7-2a(b) dictated only the manner by which Puffer-Hefty exercised their right. Accordingly,

> section 7-2a(b) is legislation subject to the rational basis test.

Puffer-Hefty, 789 N.E.2d at 809 (citations omitted).[1]

Permissible regulations affecting the "manner" of voting include, for example, "abolishing 'one punch' straight-party voting," *Orr v. Edgar*, 698 N.E.2d 560, 562, 565 (App. Ct. Ill. 1998) and requiring a certain number or percentage of signatures before a candidate or issue may be placed on the ballot, *see, e.g., Walgreen v. Ill. Liquor Control Comm'n.*, 488 N.E.2d 980, 983-84 (Ill. 1986). Although states have authority to regulate the time, place, and manner of elections, and such regulation is reviewable under a lesser standard of scrutiny, this power "does not justify, without more, the abridgment of fundamental rights, such as the right to vote." *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 217 (1986) (*citing Wesberry v. Sanders*, 376 U.S. 1, 6-7 (1964)). The wholesale denial of the right to vote based on class membership is subject to a heightened scrutiny. *See, e.g., Burdick v. Takushi*, 504 U.S. 428, 432-34 (1992); *Romer v. Evans*, 517 U.S. 620, 634 (1996) (noting that the portion of the statute at issue in *Davis v. Beason*, 133 U.S. 333 (1890) that deprived Mormons, polygamists, and advocates of polygamy the right to vote would not now survive the necessary review under strict scrutiny).

---

1. In reaching its faulty result, the Illinois Appellate Court improperly relied on cases decided under state law—not the Equal Protection Clause of the Fourteenth Amendment—to conclude "the right to vote was purely a permissive [benefit] that the legislature bestowed in furtherance of its policy." *Puffer-Hefty*, 789 N.E.2d at 808-09 (*citing Spaulding v. Ill. Comm. Coll. Bd.*, 356 N.E.2d 339 (Ill. 1976); *Latham v. Bd. of Educ. of the City of Chicago*, 201 N.E.2d 111 (Ill. 1964); *People v. Deatherage*, 81 N.E.2d 581 (Ill. 1948)).

Section 7-2a(b) extends beyond the regulation of the manner of the election by changing the nature of voting itself, and thus it must be reviewed under strict scrutiny. Contrary to the answer suggested by the Illinois Appellate Court's cursory analysis, there is a significant practical difference between casting one's vote in the privacy of a voting booth or on an absentee ballot, and signing a petition in the presence of at least one other community member when the petition will, to ensure its validity, be available for public review. No precedent of this Court holds otherwise.

Not only is the secrecy of the voting booth compromised when the act of signing a petition is viewed as functionally equivalent to casting a vote, but there is no way to ensure that, had the matter been put to a vote at a generally scheduled election, the outcome would have been the same were individual voters' decisions made in the privacy of the voting booth, and not the subject of public scrutiny which arises from signing a petition. Moreover, the mobilization of registered voters to oppose dissolution and defeat the proposed dissolution at the polls is a possibility. On a similar note, whether voters in School District 58 would have approved the annexation of Puffer-Hefty to their own district is impossible to know.

Further, signing a petition is generally not an action that produces a binding result in the same manner that casting a vote does, and public misunderstanding about the effect of signing a petition in this instance is to be expected. In this case, the parties stipulated that nearly six percent of the 1,101 valid signatures on the petition to dissolve Puffer-Hefty and annex it to School District 58 belonged to registered voters who had signed the petition twice. Sixty-five signatures were stricken from the petition for this reason. Although

duplicative voting has long been the subject of political humor, alleged errors in voting tabulation have caused national controversies in recent years. *See, e.g., Bush v. Gore,* 531 U.S. 98 (2000). Most significantly, petitions are usually signed to initiate a decision to be made by the voters at the polls, not to decide an issue conclusively.

In sum, the momentous distinctions between exercising the franchise and the supposed functional equivalent of action by petition underscore the effect of Section 7-2a(b): it does not merely regulate the manner of voting, but it operates to deny the right to vote to class of people arbitrarily defined by the population of the school district in which they live, and thus harms the affected school district by subjecting it to a less demanding process. The Illinois Appellate Court failed to undertake the requisite strict scrutiny analysis when analyzing whether Section 7-2a(b) of the Illinois School Code violates the federal Constitution; it instead applied the rational basis test. This was reversible error.

II. The Illinois Appellate Court Committed Reversible Error When It Held Section 7-2a(b), Which Discriminates Among Registered Voters When Determining the Dissolution and Annexation of a School District, Was Constitutional Because Section 7-2a(b) Does Not Survive a Strict Scrutiny Analysis.

A strict scrutiny analysis is applied in an equal protection case based on the alleged deprivation of a fundamental right or discrimination against a suspect class. *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 319 (1976). Here, the fundamental right implicated is the right to vote. Although all laws regulating elections infringe on citizens' right to vote in some manner and not all such restrictions are subject to strict scrutiny, *see, e.g., Burdick*, 504 U.S. at 432, a heightened

level of scrutiny is appropriate in this case for the reasons discussed in the previous section of this petition. When strict scrutiny is applied to Section 7-2a(b), the statute must be struck down.

This Court has acknowledged states' "breadth of power" in determining the manner of elections. *Bullock v. Carter*, 405 U.S. 134, 140-41 (1972). At the same time, however, this Court has made clear that "[s]tates may not casually deprive a class of individuals of the vote because of some remote administrative benefit to the State." *Carrington v. Rash*, 380 U.S. 89, 96 (1965). And, further, "once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment." *Harper v. Va. St. Bd. of Elections*, 383 U.S. 663, 665 (1966); *accord Evans v. Cornman*, 398 U.S. 419, 422 (1970); *McDonald v. Bd. of Election Comm'n*, 394 U.S. 802, 806 (1969); *see also Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 629 n.11 (1969) (stating, "no less a showing of a compelling justification for disenfranchising residents is required merely because the questions scheduled for the election need not have been submitted to the voters."). As discussed below, states have a right to regulate the time, place, and manner of elections; however, regulating election procedures is distinct from imposing regulations, as is the situation in this case, that have the effect of a denial of the right to vote.

Here, we assume without conceding that the governmental interest of promoting local control of education economically and efficiently articulated by the Illinois Appellate Court is a compelling state interest. *Puffer-Hefty*, 789 N.E.2d at 810. However, the procedure set forth in Section 7-2a(b) does not advance this interest, much less

serve as a necessary precursor to achieving it. Section 7-2a(b) permits bypassing in school districts with resident populations less than 5,000 the election normally required to dissolve a school district; eliminating the requirement that this matter be put to a vote, though, does not impact the economy or efficiency of local government in any appreciable manner. If subject to a vote, the proposed dissolution would be added to the ballot at one of Illinois' regularly scheduled elections. 10 Ill. Comp. Stat. 5/2A (2003) (the Illinois Election Code establishes a regular schedule of elections). In this age of automated voting, the impact of a voting requirement at a regularly scheduled election for all dissolutions and related annexations is de minimums. Therefore, eliminating the vote otherwise required to dissolve a school district is not necessary to achieve the governmental purposes of economy and efficiency set forth by the Illinois Appellate Court.

Absent such a necessity, and given the crucial nature of the right to vote, the statute does not survive strict scrutiny and must be struck down.

III. Alternatively, the Illinois Appellate Court Committed Reversible Error When it Held Section 7-2a(b), Which Discriminates Among Registered Voters When Determining the Dissolution and Annexation of a School District, Survives the Rational Basis Test.

Even assuming the Illinois Appellate Court was correct in applying the rational basis test to evaluate the constitutionality of Section 7-2a(b), its conclusion that Section 7-2a(b) is "rationally related to the legitimate state goal of promoting local control of education economically and efficiently" is in error. *Puffer-Hefty*, 789 N.E.2d at 810.

Neither the denial of some registered voters' right to vote that is sanctioned by Section 7-2a(b), nor the denial of dissolution and annexation by a public vote to school districts of less than 5,000 residents, is rationally related to a legitimate governmental interest.

When analyzing whether Section 7-2a(b) is rationally related to the assumed state interest of local control or whether the population-based distinction is arbitrary, the Illinois Appellate Court stated: "Illinois courts have consistently upheld the constitutionality of legislative classifications based on population." In support of this proposition the Illinois Appellate Court cited several cases, all of which apply exclusively to the City of Chicago (or Cook County, in which the City of Chicago is located) based on population, and none of which uphold a population-based distinction that affects voting rights. *People v. Palkes*, 288 N.E.2d 469, 474, 472-79 (Ill. 1972) (Illinois Copper Purchase Registration Law not applicable to counties of more than 1,000,000 residents); *DuBois v. Gibbons*, 118 N.E.2d 295, 298, 300-02 (Ill. App. Ct. 1954) (Illinois statute created the Emergency Committee on Crime of the City Council of the City of Chicago and endowed it with investigatory rights); *Gorgees v. Daley*, 628 N.E.2d 721, 725-26 (Ill. App. Ct. 1993) (liquor license not available to a business within 100 feet of a public school in cities of more than 500,000 residents); *Starnawski v. License Appeal Comm'n*, 428 N.E.2d 1102, 1107-08 (Ill. App. Ct. 1981) (provision of the Illinois Dramshop Act involving administrative appeal of revocation of liquor license in cities of more than 500,000 residents); *Lee v. Ret. Bd. of Policemen's Annuity and Benefit Fund*, 317 N.E.2d 758, 759-60, 762-63 (Ill. App. Ct. 1974) (amendment to the Illinois Pension Code affecting pension computation of police officers in cities of more than 500,000 residents).

These cases are distinguishable from the present situation not only because they do not address an issue as fundamental as the right to vote, but also because they are based upon the premise that "[d]ensely populated municipalities present problems of complexity and volume not encountered in less populated municipalities," especially when considering criminal actions or connected activity. *Gorgees*, 628 N.E.2d at 726. The considerations that support a population-based distinction because of a municipality's large size do not support a distinction made at the other end of the spectrum where a municipality is unusually small. In the instant case, Puffer-Hefty had less than 5,000 residents (including only 1,947 registered voters) when the petition for dissolution and annexation was filed in 1997. *Puffer-Hefty*, 789 N.E.2d at 805. The considerations that permit special legislation to promote public safety in one of the nation's largest cities do not support a population-based distinction that denies the right to vote to residents in a school district with less than 5,000 residents, and denies the school district itself appropriate process.

The special circumstances presented by cities with more than 500,000 residents can also apply to the school districts that serve those cities. In *Latham v. Board of Education of City of Chicago*, 201 N.E.2d 111 (Ill. 1964), the Supreme Court of Illinois upheld a statutory framework permitting the election of school board members in all school districts except those composed of 500,000 or more residents. Importantly, *Latham* recognized a strong state interest in this distinction, emphasizing the complex problems inherent in supervising and managing a school district of this size and concluding that these intricacies "require an especially high degree of competence in the members of the Board" which, the legislature determined, "can best be obtained . . . by the

appointive process." *Id.* at 115. The necessary connection between the state interest and the statute in *Latham* is not present here.

The lack of a rational relationship between the state interest recognized by the Illinois Appellate Court and Section 7-2a(b) becomes even more clear when examining the practical effects of Section 7-2a(b). Allegedly enacted to promote deference to local control over educational issues, Section 7-2a(b) operates to deprive School District 58 (the annexing district) and its voters of their ability to exercise any control over the annexation whatsoever, whether through petition or at the ballot box. But for the existence and application of Section 7-2a(b) in this situation, the voters in School District 58 would have had a right to determine by voting at a generally scheduled election whether to annex another school district. 105 Ill. Comp. Stat. 5/7-1, 7-2 (2003). However, this measure of local control is entirely removed from the School District 58 and its voters because of the application of Section 7-2a(b). Additionally, if the present situation were reversed and School District 58 sought to dissolve and be annexed to Puffer-Hefty, School District 58 could not accomplish this goal by petition alone. Because the population of School District 58 is greater than 5,000 residents, the generally applicable rule would pertain and a majority of the voters of both school districts would have to approve—by vote—the dissolution and annexation before these actions could become effective. *See* 105 Ill. Comp. Stat. 5/7-1 (2003). Finally, the interests of economy and efficiency recognized by the Illinois Appellate Court are not advanced by this statute because a vote to dissolve and/or annex a school district is not the subject of a special election, but is listed on the ballot at a general election, which will be held in any event in the affected school districts.

Even the Illinois cases that permit class-based voting restrictions undertake a thorough equal protection analysis. *See Spaulding v. Ill. Comm. Coll. Bd.*, 356 N.E.2d 339, 343-44 (Ill. 1976); *People v. Deatherage*, 81 N.E.2d 581, *Latham*, 201 N.E.2d at 114-16. Such a detailed analysis is not present in the Illinois Appellate Court's decision. Because the state's interest in local control is not served by requiring a vote on a petition for dissolution and annexation in certain school districts but not others, Section 7-2a(b) bears an insufficient rational relationship to the articulated state interest and must be struck down.

CONCLUSION

For the reasons set forth above, this Court should grant this petition for a writ of certiorari so that the Court may review the decision by the Illinois Appellate Court which erroneously reviewed Section 7-2a(b) under the rational basis test rather than the strict scrutiny analysis, and improperly concluded Section 7-2a(b) was constitutional

Respectfully submitted,

PATRICIA J. WHITTEN
Counsel of Record
J. TODD FAULKNER
ANTHONY D. D'AMATO
KRISTI L. BOWMAN
FRANCZEK SULLIVAN P.C.
Suite 3400
300 South Wacker Drive
Chicago, Illinois 60606
(312) 986-0300
Counsel for Petitioners

APPENDIX

APPENDIX A — OPINION OF THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT DATED APRIL 25, 2003

Appellate Court of Illinois,
Second District.

No. 2-02-0196.

PUFFER-HEFTY SCHOOL DISTRICT NO. 69
and Bruce Weeks,

Plaintiffs-Appellants,

v.

The DU PAGE REGIONAL BOARD OF SCHOOL TRUSTEES OF DU PAGE COUNTY and its Members, R. Donald Mahlke, Laura Pollastrini, Joseph Patricelli, Gloria K. Scigousky, Martha Rogers, Debra Olson, Gwendolyn L. Bates, and Berardo J. Desimone, Regional Superintendent of the Schools of Du Page County and ex officio Secretary of the Regional Board of School Trustees for Du Page County; The Committee of Ten And Its Members, Frances Holbrook, David J. Schilling, Dushan Budimir, Debra Lynn Wesley, William Fehrmann, Eunice Giammona, Lori Budimir, Michael Wesley, Hugo Montenegro, Theresa Brezinski; and School District No. 58,

Defendants-Appellees.

April 25, 2003.

Appendix A

Presiding Justice HUTCHINSON delivered the opinion of the court:

Plaintiffs, Puffer-Hefty School District No. 69 (Puffer-Hefty) and Bruce Weeks, appeal from an order of the circuit court of Du Page County on administrative review affirming a decision by defendant Du Page Regional Board of School Trustees (the Board). Pursuant to sections 7-2a(b) and 7-11 of the School Code (105 ILCS 5/7-2a(b), 7-11 (West 1996)), the Board dissolved Puffer-Hefty and annexed its territory to defendant Downers Grove School District No. 58 (Downers Grove). Plaintiffs filed a complaint seeking administrative review of the Board's decision and a judgment declaring section 7-2a(b) of the School Code unconstitutional. The trial court affirmed the Board's decision but declined to rule on the constitutionality of the statute. Plaintiffs timely appeal to this court, challenging the Board's decision and the constitutionality of the statute. For the reasons that follow, we affirm the Board's decision and uphold the constitutionality of section 7-2a(b) of the School Code.

The following facts are taken from the record on appeal, including the Board's factual findings, which are "held to be prima facie true and correct" (735 ILCS 5/3-110 (West 2000)). Puffer-Hefty is situated within Du Page County, and in July 1997 its population numbered less than 5,000 residents. In October 1996, residents of Puffer-Hefty filed a petition pursuant to sections 7- 2a(b) and 7-11 of the School Code (105 ILCS 5/7-2a(b), 7-11 (West 1996)), seeking to dissolve the school district and annex its territory to a contiguous school district. In December 1996 the Board dismissed the petition because the petition lacked the proper designation of a

Appendix A

"committee of 10" petitioners as required by section 7-6(c) of the School Code (105 ILCS 5/7- 6(c) (West 1996)), and the Board, therefore, lacked jurisdiction.

On January 27, 1997, defendant Committee of Ten conducted a public informational meeting to inform residents of Puffer-Hefty of the proposed dissolution and to answer questions regarding the proposed dissolution. Prior to that, the Committee of Ten gave at least 10 days' notice of the meeting by publication in the Chicago Tribune.

On July 25, 1997, the Committee of Ten filed a second petition seeking dissolution of Puffer-Hefty and annexation of its territory pursuant to sections 7-2a(b) and 7-11 of the School Code (105 ILCS 5/7-2a(b), 7-11 (West 1996)). As of July 25, 1997, Puffer-Hefty had 1,947 registered voters. The petition filed on July 25 contained 1,169 signatures. The parties later stipulated that, of those 1,169 signatures, 3 individuals had moved or died before July 25, 1997, thereby invalidating those signatures, and 65 signatures were duplicates and should be counted only once. The parties agreed that, after the subsection of those 68 signatures, the petition contained 1,101 valid signatures.

On October 6, 1997, the Board dismissed the second petition after it determined that it violated section 7-8 of the School Code (105 ILCS 5/7-8 (West 1996)), which prohibited the filing of a similar petition for dissolution and annexation within two years of the resolution of an earlier petition. On administrative review, the trial court reversed the Board's dismissal of the second petition, and this court affirmed.

Appendix A

See *Holbrook v. Regional Board of School Trustees*, 305 Ill.App.3d 744, 238 Ill.Dec. 982, 713 N.E.2d 228 (1999).

On remand, the Board resumed hearings and designated December 10, 1999, as the final date by which the parties could submit signature withdrawals, rescission of signature withdrawals, and signature additions to the original petition. The Board reconvened on July 17, 2000, to rule on the petition. The Board first made decisions regarding the validity of the signatures to be withdrawn from and added to the petition. The Board then voted unanimously that the petition was signed by a majority of the registered voters of Puffer-Hefty and that the petition was properly filed under section 7-2a(b) of the School Code. The Board thereafter recognized the dissolution of Puffer-Hefty and indicated it would conduct further hearings regarding the issue of annexation.

On February 15, 2001, after conducting additional hearings, the Board decided to annex Puffer-Hefty to Downers Grove. See 105 ILCS 5/7-11 (West 1996). The Board's decisions were reflected in its written order dated February 22, 2001. On March 5, 2001, plaintiffs filed a complaint in the trial court seeking administrative review of the Board's decision and seeking a declaratory judgment that section 7-2a(b) of the School Code was unconstitutional. Both sides fully briefed the issues. On January 25, 2002, the trial court affirmed the Board's decisions to dissolve Puffer-Hefty and annex its territory to Downers Grove. Plaintiffs timely appeal following the trial court's denial of their motion to reconsider.

Appendix A

[The following material is nonpublishable under Supreme Court Rule 23.]

[The preceding material is nonpublishable under Supreme Court Rule 23.]

Plaintiffs first contend that the trial court erred when it declined to rule on the constitutionality of section 7-2a(b) of the School Code (105 ILCS 5/7-2a(b) (West 1996)). Plaintiffs argued that section 7-2a(b) violated the equal protection clause (U.S. Const., amend.XIV) and constituted special legislation (Ill. Const.1970, art. IV, § 13). The trial court determined that, because nonconstitutional grounds existed to deny Puffer-Hefty relief, it was unnecessary to consider the constitutionality of section 7-2a(b).

In determining whether the trial court erred when it declined to consider the constitutionality of section 7-2a(b), we are guided by the general principles governing an agency's or a tribunal's authority to decide constitutional issues raised in administrative proceedings. An administrative agency must accept as constitutional the statute over which it has jurisdiction. *Board of Education of Rich Township High School District No. 227 v. Brown*, 311 Ill.App.3d 478, 490, 244 Ill.Dec. 68, 724 N.E.2d 956 (1999). An administrative agency lacks the authority to invalidate a statute on constitutional grounds or even to question its validity. *Texaco-Cities Service Pipeline Co. v. McGaw*, 182 Ill.2d 262, 278, 230 Ill.Dec. 991, 695 N.E.2d 481 (1998), citing *Moore v. City of East Cleveland*, 431 U.S. 494, 497 n. 5, 97 S.Ct. 1932, 1934 n. 5, 52 L.Ed.2d 531, 536 n. 5 (1977); *Brown*, 311 Ill.App.3d at 490, 244 Ill.Dec. 68, 724 N.E.2d 956.

Such matters must be raised before the trial court, which is vested with original jurisdiction over constitutional issues raised in a complaint for administrative review. *Brown*, 311 Ill.App.3d at 491, 244 Ill.Dec. 68, 724 N.E.2d 956. A trial court's review of constitutional issues on administrative review is *de novo*. *Brown*, 311 Ill.App.3d at 488, 244 Ill.Dec. 68, 724 N.E.2d 956, citing *Howard v. Lawton*, 22 Ill.2d 331, 175 N.E.2d 556 (1961).

In the present case, plaintiffs' complaint for administrative review specifically sought a declaration that section 7-2a(b) of the School Code was unconstitutional. Both sides fully briefed the constitutional issue. The trial court was given the opportunity to consider the issue. See, *e.g.*, *Michigan-Chestnut Ltd. Partnership v. Rosewell*, 104 Ill.App.3d 249, 252, 60 Ill.Dec. 16, 432 N.E.2d 915 (1982), citing *Steven v. Falese Land Co.*, 50 Ill.App.3d 231, 246, 8 Ill.Dec. 581, 365 N.E.2d 967 (1977) (declining to address constitutional questions that the trial court was not given an opportunity to consider). However, it declined to rule on the constitutional issue. This was error.

Remand is unnecessary, though. If the issue is one of law and is fully briefed and argued by the parties, this court may consider the issue for the first time on appeal. See *Committee for Educational Rights v. Edgar*, 174 Ill.2d 1, 11, 220 Ill.Dec. 166, 672 N.E.2d 1178 (1996), citing *People ex rel. Daley v. Datacom Systems Corp.*, 146 Ill.2d 1, 27, 165 Ill.Dec. 655, 585 N.E.2d 51 (1991); see also *Church v. State of Illinois*, 164 Ill.2d 153, 163, 207 Ill.Dec. 6, 646 N.E.2d 572 (1995) (wherein the trial court did not consider the constitutionality of a statute but the reviewing courts did).

Appendix A

The constitutionality of section 7-2a(b) of the School Code presents a question of law. Whether section 7-2a(b) violates equal protection or constitutes special legislation has been sufficiently briefed and argued by both sides to facilitate our review. Furthermore, the questions are of substantial public importance, and we believe the public interest and judicial economy favor consideration of the merits. See *Committee for Educational Rights*, 174 Ill.2d at 11, 220 Ill.Dec. 166, 672 N.E.2d 1178. Accordingly, we proceed to the merits of plaintiffs' argument.

Section 7-2a(b) of the School Code provides in relevant part:

> "Any school district with a population of less than 5,000 residents shall be dissolved and its territory annexed as provided in Section 7-11 by the regional board of school trustees upon the filing with the regional board of school trustees of a petition adopted by resolution of the board of education or a petition signed by a majority of the registered voters of the district seeking such dissolution." 105 ILCS 5/7-2a(b) (West 1996).

Plaintiffs argue that section 7-2a(b) of the School Code violates equal protection (U.S. Const., amend.XIV) and constitutes special legislation (Ill. Const.1970, art. IV, § 13). Plaintiffs assert that the statute violates equal protection because it treats school districts with populations of less than 5,000 differently from other school districts with populations greater than 5,000. Plaintiffs argue that, in school districts with populations greater than 5,000, the decision to dissolve

and annex must be approved by a majority of voters at an election. See 105 ILCS 5/7- 1(a) (West 1996). Plaintiffs urge this court to apply a strict scrutiny analysis because the statute concerns the fundamental right to vote.

The Committee of Ten counters that different classes of people may be treated differently if the classifications created by the statute are reasonably related to the objective of the statute (*In re Petition of the Village of Hanover Park*, 312 Ill.App.3d 834, 245 Ill.Dec. 213, 727 N.E.2d 660 (2000)). The Committee of Ten also maintains that the appropriate analysis is rational basis review because everyone in the Puffer-Hefty school district was treated equally with respect to petitioning for dissolution without an election. The Committee of Ten cites *Latham v. Board of Education of the City of Chicago*, 31 Ill.2d 178, 201 N.E.2d 111 (1964), in support of its position. In *Latham*, our supreme court considered whether article 34 of the School Code (Ill.Rev.Stat.1963, ch. 122, par. 34-1 *et seq.*) denied equal protection because it deprived residents of Chicago of the right to vote for members of the board of education, a right statutorily enjoyed by residents of smaller districts in Illinois. The *Latham* court adopted the reasoning from *People v. Deatherage*, 401 Ill. 25, 81 N.E.2d 581 (1948), and determined that the legislature possessed the power to legislate in reference to public school matters and that the right to vote was purely a permissive that the legislature bestowed in furtherance of its policy. *Latham*, 31 Ill.2d at 186, 201 N.E.2d 111. The *Latham* court concluded that the state's regulatory interests were sufficient to justify the restriction and, therefore, the statute did not deny the residents equal protection. *Latham*, 31 Ill.2d at 186-87, 201 N.E.2d 111.

Appendix A

The primary rule of statutory interpretation is to ascertain and give effect to the intent of the legislature, which should be construed primarily from the language of the statute. *East St. Louis Federation of Teachers, Local 1220 v. East St. Louis School District No. 189*, 178 Ill.2d 399, 411-12, 227 Ill.Dec. 568, 687 N.E.2d 1050 (1997), citing *Bonaguro v. County Officers Electoral Board*, 158 Ill.2d 391, 397, 199 Ill.Dec. 659, 634 N.E.2d 712 (1994). Legislation enjoys a strong presumption of constitutionality. *Bilyk v. Chicago Transit Authority*, 125 Ill.2d 230, 235, 125 Ill.Dec. 822, 531 N.E.2d 1 (1988). Parties seeking to challenge the constitutionality of a statute bear the burden of rebutting the presumption and establishing a constitutional violation. *East St. Louis Federation of Teachers*, 178 Ill.2d at 412, 227 Ill.Dec. 568, 687 N.E.2d 1050, citing *People v. Blackorby*, 146 Ill.2d 307, 318, 166 Ill.Dec. 902, 586 N.E.2d 1231 (1992). Accordingly, a court will construe a statute as constitutional where it can do so reasonably. *East St. Louis Federation of Teachers*, 178 Ill.2d at 412, 227 Ill.Dec. 568, 687 N.E.2d 1050, citing *Bonaguro*, 158 Ill.2d at 397, 199 Ill.Dec. 659, 634 N.E.2d 712. Our review is *de novo*. *Paris v. Feder*, 179 Ill.2d 173, 177-78, 227 Ill.Dec. 800, 688 N.E.2d 137 (1997).

In determining the level of scrutiny, we first address whether the statute infringes upon a fundamental right. "Unless legislation operates to the disadvantage of a suspect classification or infringes upon a fundamental right, the legislation, to be upheld as constitutional, must simply bear a rational relationship to a legitimate governmental interest." *Chicago National League Ball Club, Inc. v. Thompson*, 108 Ill.2d 357, 367-68, 91 Ill.Dec. 610, 483 N.E.2d 1245 (1985),

citing *Illinois Housing Development Authority v. Van Meter*, 82 Ill.2d 116, 119-20, 45 Ill.Dec. 18, 412 N.E.2d 151 (1980). Although education is certainly a vitally important governmental function (see *Fumarolo v. Chicago Board of Education*, 142 Ill.2d 54, 73-74, 153 Ill.Dec. 177, 566 N.E.2d 1283 (1990)), it is not a fundamental individual right for equal protection purposes. *Committee for Educational Rights*, 174 Ill.2d at 11, 220 Ill.Dec. 166, 672 N.E.2d 1178.

The constitutional principle of "one person, one vote" derives from two articles of the Illinois Constitution of 1970. Article I, section 2, provides that "[n]o person shall be * * * denied the equal protection of the laws." Ill. Const.1970, art. I, § 2. Article III, section 3, states that "[a]ll elections shall be free and equal." Ill. Const.1970, art. III, § 3. The right to vote is a fundamental right. *Tully v. Edgar*, 171 Ill.2d 297, 306, 215 Ill.Dec. 646, 664 N.E.2d 43 (1996); *Fumarolo*, 142 Ill.2d at 74, 153 Ill.Dec. 177, 566 N.E.2d 1283. Therefore, legislation that infringes upon the right to vote is subject to strict scrutiny. *Orr v. Edgar*, 298 Ill.App.3d 432, 437-38, 232 Ill.Dec. 469, 698 N.E.2d 560 (1998), citing *Tully*, 171 Ill.2d at 304, 215 Ill.Dec. 646, 664 N.E.2d 43; *Fumarolo*, 142 Ill.2d at 74, 153 Ill.Dec. 177, 566 N.E.2d 1283. However, it is equally well established that the legislature has the right to reasonably regulate the time, place, and manner in which the citizens exercise their right to vote. *Orr*, 298 Ill.App.3d at 438, 232 Ill.Dec. 469, 698 N.E.2d 560, citing *McDunn v. Williams*, 156 Ill.2d 288, 316, 189 Ill.Dec. 417, 620 N.E.2d 385 (1993); see also *Walgreen Co. v. Illinois Liquor Control Comm'n*, 111 Ill.2d 120, 94 Ill.Dec. 733, 488 N.E.2d 980 (1986). Legislation that affects voting in this regard is subject to the rational basis test. *Orr*, 298 Ill.App.3d at 438, 232

Ill.Dec. 469, 698 N.E.2d 560, citing *Walgreen*, 111 Ill.2d at 127, 94 Ill.Dec. 733, 488 N.E.2d 980.

In the present case, we determine that section 7-2a(b) of the School Code does not infringe upon the right to vote. Rather, the statute affects the manner in which the citizens of Puffer-Hefty exercise their right to vote. See *Orr*, 298 Ill.App.3d at 438, 232 Ill.Dec. 469, 698 N.E.2d 560. The statute does not prohibit those citizens of Puffer-Hefty from voting to maintain or dissolve their school district. Rather, it provides for a method to bring the voting booth to each of their homes in the form of a petition circulation and signing. Each registered voter received notice by publication of a public informational meeting concerning the dissolution. Each registered voter of Puffer-Hefty still had the right to cast a decision on whether to maintain or dissolve Puffer-Hefty. Section 7-2a(b) dictated only the manner by which the Puffer-Hefty voters exercised their right. Accordingly, section 7-2a(b) is legislation subject to the rational basis test. See *Orr*, 298 Ill.App.3d at 438, 232 Ill.Dec. 469, 698 N.E.2d 560, citing *Walgreen*, 111 Ill.2d at 127, 94 Ill.Dec. 733, 488 N.E.2d 980.

We also find support for our conclusion in *Spaulding v. Illinois Community College Board*, 64 Ill.2d 449, 1 Ill.Dec. 213, 356 N.E.2d 339 (1976). In *Spaulding*, our supreme court held that there was no constitutional right to a referendum in connection with the formation of a new community college district although the relevant statute provided for a referendum when territory was being annexed to a district. *Spaulding*, 64 Ill.2d at 456, 1 Ill.Dec. 213, 356 N.E.2d 339. The *Spaulding* court relied on its earlier decision in *Latham*

and stated that the right to vote in a referendum was "purely a permissive one bestowed by the legislature." *Spaulding*, 64 Ill.2d at 456, 1 Ill.Dec. 213, 356 N.E.2d 339. It thereafter applied the rational basis test and concluded that no equal protection violation existed. *Spaulding*, 64 Ill.2d at 456-57, 1 Ill.Dec. 213, 356 N.E.2d 339.

We find *Spaulding* and the authorities cited by the Committee of Ten persuasive and conclude that section 7-2a(b) of the School Code does not infringe on the fundamental right to vote. Because the School Code is an enactment bestowed upon us by the legislature (*Spaulding*, 64 Ill.2d at 456, 1 Ill.Dec. 213, 356 N.E.2d 339) and because neither a fundamental right nor a suspect class is involved, there is no constitutional right to hold an election to dissolve and annex Puffer-Hefty. Therefore, we need only to determine whether the statute bears a rational relationship to the State's ends or promotes the State's interest in this area.

Under the rational basis test, judicial review of a legislative classification is limited and generally deferential. *Committee for Educational Rights*, 174 Ill.2d at 37, 220 Ill.Dec. 166, 672 N.E.2d 1178, citing *Jacobson v. Department of Public Aid*, 171 Ill.2d 314, 323, 216 Ill.Dec. 96, 664 N.E.2d 1024 (1996). The challenged classification need only be rationally related to a legitimate state goal, and if any set of facts can reasonably be conceived to justify the classification, it must be upheld. *Committee for Educational Rights*, 174 Ill.2d at 37, 220 Ill.Dec. 166, 672 N.E.2d 1178. Whether a rational basis exists for legislation presents a question of law, which we review *de novo*. *Jacobson*, 171 Ill.2d at 323, 216 Ill.Dec. 96, 664 N.E.2d 1024.

The equal protection question, therefore, is whether a rational basis exists for allowing the dissolution and annexation of a school district based on a majority of voter signatures when the school district's population is less than 5,000 residents. The concept of "local control" in public education connotes not only the opportunity for local participation in decision making but also " 'the freedom to devote more money to the education of one's children.'" *Committee for Educational Rights*, 174 Ill.2d at 38, 220 Ill.Dec. 166, 672 N.E.2d 1178, quoting *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 49-50, 93 S.Ct. 1278, 1304-05, 36 L.Ed.2d 16, 52 (1973). Under prior decisions of our supreme court, the state's interest in education is so pervasive that it may constitutionally establish or alter school districts without a local referendum or a subsequent election. See *Spaulding*, 64 Ill.2d at 456, 1 Ill.Dec. 213, 356 N.E.2d 339, citing *People v. Francis*, 40 Ill.2d 204, 212, 239 N.E.2d 129 (1968); see also *People ex rel. McLain v. Gardner*, 408 Ill. 228, 96 N.E.2d 551 (1951); *People v. Deatherage*, 401 Ill. 25, 81 N.E.2d 581 (1948). We believe that a system to dissolve and annex based on a majority of voter signatures when a school district's population is less than 5,000 residents is rationally related to the legitimate state goal of promoting local control of education economically and efficiently. See *Committee for Educational Rights*, 174 Ill.2d 1, 220 Ill.Dec. 166, 672 N.E.2d 1178. It was the Puffer-Hefty residents themselves asserting their local control that decided the fate of their school system.

Plaintiffs argue, though, that the population-based distinction created by section 7-2a(b) of the School Code is an arbitrary classification and, therefore, cannot be rationally

related to a legitimate government interest. We disagree. Illinois courts have consistently upheld the constitutionality of legislative classifications based upon population. *Gorgees v. Daley*, 256 Ill.App.3d 143, 148, 195 Ill.Dec. 257, 628 N.E.2d 721 (1993), citing *Chicago National League Ball Club*, 108 Ill.2d 357, 91 Ill.Dec. 610, 483 N.E.2d 1245; *People v. Palkes*, 52 Ill.2d 472, 288 N.E.2d 469 (1972); *Du Bois v. Gibbons*, 2 Ill.2d 392, 118 N.E.2d 295 (1954); *Starnawski v. License Appeal Comm'n*, 101 Ill.App.3d 1050, 57 Ill.Dec. 422, 428 N.E.2d 1102 (1981); *Lee v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 22 Ill.App.3d 600, 317 N.E.2d 758 (1974). Accordingly, plaintiffs' claim fails.

Plaintiffs' second argument regarding the constitutionality of section 7-2a(b) of the School Code is that the statute is special legislation because it affects only those school districts with populations of less than 5,000. Article IV, section 13, of the Illinois Constitution states:

> "The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination." Ill. Const.1970, art. IV, § 13.

Special legislation confers a special benefit or privilege on a person or group of persons to the exclusion of others similarly situated. *Chicago National League Ball Club*, 108 Ill.2d at 367, 91 Ill.Dec. 610, 483 N.E.2d 1245. It discriminates in favor of a select group without a sound, reasonable basis. *Chicago National League Ball Club*, 108 Ill.2d at 367, 91 Ill.Dec. 610, 483 N.E.2d 1245, citing *Fireside Chrysler-Plymouth, Mazda*,

Inc. v. Edgar, 102 Ill.2d 1, 4, 79 Ill.Dec. 677, 464 N.E.2d 275 (1984). Though the constitutional protections involved are not identical, a claim that the special-legislation provision has been violated is generally judged by the same standard that is used in considering a claim that equal protection has been denied. *Chicago National League Ball Club*, 108 Ill.2d at 368, 91 Ill.Dec. 610, 483 N.E.2d 1245, citing *Van Meter*, 82 Ill.2d at 123, 45 Ill.Dec. 18, 412 N.E.2d 151. Accordingly, we reject plaintiffs' claim of unconstitutional special legislation based on a population classification for the same reasons that we rejected their equal protection claim.

Plaintiffs' reliance on *In re Belmont Fire Protection District*, 111 Ill.2d 373, 95 Ill.Dec. 521, 489 N.E.2d 1385 (1986), and *In re Petition of the Village of Vernon Hills*, 168 Ill.2d 117, 212 Ill.Dec. 883, 658 N.E.2d 365 (1995), is misplaced. In *Belmont*, the supreme court considered an enactment that, as amended, provided for the disconnection and transfer of a fire protection district in any county with a population of more than 600,000 but less than 1 million residents. The House debates indicated that the purpose of the amendment relating to population was to limit the bill's application to Du Page County. The supreme court found that the enactment denied all other counties the privilege of consolidating fire protection services into a single fire protection district and held that the population classification was an arbitrary distinction constituting special legislation. *Belmont*, 111 Ill.2d at 382, 95 Ill.Dec. 521, 489 N.E.2d 1385. In *Vernon Hills*, our supreme court declared legislation involving the transfer and annexation of non-home-rule municipal fire protection districts with populations between 500,000 and 750,000 unconstitutional because it applied only

to Lake County. *Vernon Hills*, 168 Ill.2d at 126-27, 212 Ill.Dec. 883, 658 N.E.2d 365.

Here, however, section 7-2a(b) of the School Code applies to all Illinois school districts with fewer than 5,000 residents. Plaintiffs have presented no evidence to establish that Puffer-Hefty is the only school district in Illinois with fewer than 5,000 residents. Accordingly, *Belmont* and *Vernon* do not apply here. We also note that, in any given time period and depending on the increase or decrease of an area's population, an Illinois school district may or may not be subject to the dissolution and annexation provisions of section 7-2a(b). Therefore, because the statute applies to all Illinois school districts with fewer than 5,000 residents and is uniform in its application, it does not constitute special legislation. See also *People ex rel. Stamos v. Public Building Comm'n*, 40 Ill.2d 164, 238 N.E.2d 390 (1968) (holding valid an act that extended the authority to create a public building commission to municipalities having populations of 3,000 or more).

Inasmuch as it was plaintiffs' burden to rebut the presumption of constitutionality of section 7-2a(b) of the School Code and establish a constitutional violation (*East St. Louis Federation of Teachers*, 178 Ill.2d at 412, 227 Ill.Dec. 568, 687 N.E.2d 1050), they have failed to satisfy their burden.

Plaintiffs next take issue with the sufficiency of the July 25, 1997, petition and the Board's decision to grant the petition dissolving Puffer-Hefty and the Board's later decision to annex the territory into Downers Grove.

Appendix A

Our standard of review for a final administrative decision is governed by the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2000)). Under the Administrative Review Law, our review encompasses all questions of law and fact presented by the entire record. 735 ILCS 5/3-110 (West 2000); *Bridgestone/Firestone, Inc. v. Aldridge*, 179 Ill.2d 141, 148, 227 Ill.Dec. 753, 688 N.E.2d 90 (1997). Our role is to review the administrative decision, not the trial court's determination. *Thigpen v. Retirement Board of Firemen's Annuity & Benefit Fund*, 317 Ill.App.3d 1010, 1017, 251 Ill.Dec. 682, 741 N.E.2d 276 (2000).

In examining an administrative agency's factual findings, we are limited to ascertaining whether such findings of fact are against the manifest weight of the evidence. *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill.2d 191, 204, 229 Ill.Dec. 522, 692 N.E.2d 295 (1998), citing *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill.2d 76, 88, 180 Ill.Dec. 34, 606 N.E.2d 1111 (1992). An agency's findings on a question of law are reviewed *de novo*. *City of Belvidere*, 181 Ill.2d at 205, 229 Ill.Dec. 522, 692 N.E.2d 295; *White v. City of Aurora*, 323 Ill.App.3d 733, 735, 257 Ill.Dec. 618, 753 N.E.2d 1244 (2001). A decision involving a mixed question of fact and law, however, is reviewed using a "clearly erroneous" standard. *City of Belvidere*, 181 Ill.2d at 205, 229 Ill.Dec. 522, 692 N.E.2d 295; *Virden v. Board of Trustees of the Firefighters Pension Fund*, 304 Ill.App.3d 330, 335, 237 Ill.Dec. 517, 709 N.E.2d 986 (1999).

In the present case, plaintiffs state that the only dispute concerns the interpretation of section 7-2a(b) of the School

Code and other related provisions. Therefore, our review is *de novo*. See *City of Belvidere*, 181 Ill.2d at 205, 229 Ill.Dec. 522, 692 N.E.2d 295; *White*, 323 Ill.App.3d at 735, 257 Ill.Dec. 618, 753 N.E.2d 1244. Finally, if the record contains competent evidence supporting the administrative body's decision, it must be affirmed on review. *Merrifield v. Illinois State Police Merit Board*, 294 Ill.App.3d 520, 528, 229 Ill.Dec. 255, 691 N.E.2d 191 (1997).

[The following material is nonpublishable under Supreme Court Rule 23.]

[The preceding material is nonpublishable under Supreme Court Rule 23.]

Plaintiffs present various arguments in support of their contention that the Board erred when it granted the July 25, 1997, petition to dissolve Puffer- Hefty. Most of their arguments focus on the Board's interpretation of section 7-2a(b) of the School Code. Our interpretation of the statute at issue will effectively resolve those arguments. Section 7-2a(b) provides in relevant part:

> "Any school district with a population of less than 5,000 residents shall be dissolved and its territory annexed as provided in Section 7-11 by the regional board of school trustees upon the filing with the regional board of school trustees of a petition adopted by resolution of the board of education or a petition signed by a majority of the registered voters of the district seeking such dissolution. No petition shall be adopted or signed

under this subsection until the board of education or the petitioners, as the case may be, shall have given at least 10 days' notice to be published once in a newspaper having general circulation in the district and shall have conducted a public informational meeting to inform the residents of the district of the proposed dissolution and to answer questions concerning the proposed dissolution. The petition shall be filed with and decided solely by the regional board of school trustees of the region in which the regional superintendent of schools has supervision of the school district being dissolved. The regional board of school trustees shall not act on a petition filed by a board of education if within 45 days after giving notice of the hearing required under Section 7-11 a petition in opposition to the petition of the board to dissolve, signed by a majority of the registered voters of the district, is filed with the regional board of school trustees. The regional board of school trustees shall have no authority to deny dissolution requested in a proper petition for dissolution filed under this subsection (b), but shall exercise its discretion in accordance with Section 7-11 on the issue of annexing the territory of a district being dissolved, giving consideration to but not being bound by the wishes expressed by the residents of the various school districts that may be affected by such annexation." 105 ILCS 5/7-2a(b) (West 1996).

Appendix A

We are guided by the following principles concerning our interpretation of section 7-2a(b) of the School Code. Where a legal question is involved, such as the proper interpretation of a statute, the agency's finding is not binding on the reviewing court. *Moller v. Civil Service Comm'n*, 326 Ill.App.3d 660, 664, 260 Ill.Dec. 398, 761 N.E.2d 242 (2001), citing *City of Freeport v. Illinois State Labor Relations Board*, 135 Ill.2d 499, 507, 143 Ill.Dec. 220, 554 N.E.2d 155 (1990). Generally, courts will accord deference to an agency's statutory interpretation; however, the interpretation will be rejected when erroneous. *Moller*, 326 Ill.App.3d at 664, 260 Ill.Dec. 398, 761 N.E.2d 242, citing *City of Decatur v. American Federation of State, County, & Municipal Employees, Local 268*, 122 Ill.2d 353, 361, 119 Ill.Dec. 360, 522 N.E.2d 1219 (1988).

In regard to interpreting a statute, our supreme court has stated:

> "The primary rule of statutory construction is to give effect to legislative intent by first looking at the plain meaning of the language. 'Where the language of a statute is clear and unambiguous, a court must give it effect as written, without "reading into it exceptions, limitations or conditions that the legislature did not express." ' [Citation.] Courts will first look to the words of the statute, for the language used by the legislature is the best indication of legislative intent. [Citation.] When the language of a statute is clear, no resort is necessary to other tools of interpretation. [Citation.]" *Davis v. Toshiba*

Appendix A

Machine Co., America, 186 Ill.2d 181, 184-85, 237 Ill.Dec. 769, 710 N.E.2d 399 (1999).

Here, the first precondition for the Committee of Ten to dissolve Puffer-Hefty was to give at least 10 days' notice of an informational meeting "in a newspaper having general circulation in the district." 105 ILCS 5/7- 2a(b) (West 1996). The Board found that the Committee of Ten satisfied this first precondition by publishing the notice in the Chicago Tribune. Although plaintiffs complain that the notice was "buried" and "effectively meaningless," it is not an issue here. See *Second Federal Savings & Loan Ass'n of Chicago v. Home Savings & Loan Ass'n*, 60 Ill.App.3d 248, 254, 17 Ill.Dec. 350, 376 N.E.2d 349 (1978) (noting that Chicago daily papers are circulated throughout the state). Plaintiffs present no challenge to this finding of the Board, which therefore must "be held to be prima facie true and correct." 735 ILCS 5/3-110 (West 2000).

The second precondition for the Committee of Ten to dissolve Puffer-Hefty was to conduct an informational meeting to inform the residents of Puffer-Hefty of the proposed dissolution and to answer questions about it. Here again, plaintiffs complain that only 35 people attended the meeting and that the essential questions went unanswered. However, plaintiffs present no challenge to this finding of the Board, and, therefore, the finding is "held to be prima facie true and correct." 735 ILCS 5/3-110 (West 2000).

Thereafter, the Committee of Ten faced the task of circulating petitions to collect signatures of registered voters who supported the dissolution of Puffer-Hefty. Section

7-2a(b) of the School Code required the petition to be signed by a "majority of the registered voters of the district." 105 ILCS 5/7-2a(b) (West 1996). The parties stipulated that on July 25, 1997, there were 1,947 registered voters in Puffer-Hefty. Therefore, a majority consisted of 974 registered voters. The Committee of Ten collected 1,169 signatures and filed the petition on July 25, 1997. The parties further agreed that, of those 1,169 signatures, 3 signatures were invalid, and 65 signatures were duplicates. The parties agreed that subtracting those 68 signatures resulted in 1,101 valid signatures on the July 25, 1997, petition.

The heart of this appeal is premised on the events transpiring after July 25, 1997. Again, to summarize: on October 6, 1997, the Board dismissed the July 25, 1997, petition. On administrative review, the trial court reversed the Board's dismissal, and this court affirmed. See *Holbrook*, 305 Ill.App.3d 744, 238 Ill.Dec. 982, 713 N.E.2d 228. On remand, the Board resumed hearings and designated December 10, 1999, as the final date by which the parties could submit signature withdrawals, rescission of signature withdrawals, and signature additions to the original petition. The Board reconvened on July 17, 2000, and made decisions regarding the validity of signatures to be withdrawn from and added to the petition. After deciding the validity of the signatures, the Board voted unanimously that the petition was signed by a majority of the registered voters of Puffer-Hefty and that the petition was properly filed under section 7-2a(b) of the School Code. The Board thereafter recognized the dissolution of Puffer-Hefty and indicated it would exercise its discretion regarding the issue of annexation.

Appendix A

The question appears to be at what point should the Board cease to allow the addition of signatures, the withdrawal of signatures, and the rescission of the withdrawn signatures. Plaintiffs argue that the Board should not allow any additional signatures or rescission of withdrawn signatures after the July 25, 1997, filing date but should allow the withdrawal of signatures at any time and "until a decision on the merits is made." The Committee of Ten counters that section 7-2a(b) petitions are presumptively valid upon the date of filing, and that presumption negates the opportunity for individuals to withdraw or add their signatures after the date the petition has been filed. Plaintiffs state that the resolution of this question is dispositive of the entire case because it involves the sufficiency of the July 25, 1997, petition. We agree.

Section 7-2a(b) states that "[a]ny school district with a population of less than 5,000 residents shall be dissolved * * * upon the filing with the regional board of school trustees of * * * a petition signed by a majority of the registered voters of the district seeking such dissolution." 105 ILCS 5/7-2a(b) (West 1996). We note that the statute requires no postfiling hearing on the matter to effectuate the dissolution.

Plaintiffs make various arguments in support of accepting withdrawals of signatures at any time and against allowing any additional signatures or rescissions of withdrawn signatures after July 25, 1997. Plaintiffs rely on *Littell v. Board of Supervisors*, 198 Ill. 205, 65 N.E. 78 (1902), for the proposition that signatures may be withdrawn at any time before a board takes final action and *Augustine v. Regional Board of School Trustees*, 253 Ill.App.3d 827, 193 Ill.Dec. 33, 625 N.E.2d 1154 (1993), for the proposition that

"additions after the date of filing are clearly prohibited by section 7-1 of the [School] Code." *Augustine*, 253 Ill.App.3d at 836, 193 Ill.Dec. 33, 625 N.E.2d 1154.

In *Littell*, a statute required the county board to create a new township if three-fourths of the registered voters in its territory so petitioned. A petition to create a new township, signed by 227 legal voters, was filed in March 1901 with the county board of Vermilion County. At its March 1901 meeting, the county board ordered the notices to be posted and published as required by the statute, and fixed the June session as the time for final hearing. On June 10, 1901, 77 of the voters who had signed the original petition asked to withdraw their signatures. On June 12, 1901, 50 of those 77 voters repudiated their action and asked that their signatures remain on the original petition. At the September session, the county board denied the petition. A writ of *mandamus* was sought, and our supreme court considered the right of the petitioners to withdraw their names and affirmed the decision of the county board. *Littell*, 198 Ill. at 206-07, 65 N.E. 78.

The *Littell* court noted that, under the relevant statute, after the petition was filed, the county board was required to give notice before it could take any final action to allow interested parties to appear at the final hearing. *Littell*, 198 Ill. at 208, 65 N.E. 78. The *Littell* court reasoned that "[e]ach petitioner acts on his individual responsibility, and if he should change his mind on the question whether a new township would better serve the convenience of the inhabitants residing therein, or if he should be induced to sign it under a misapprehension or through undue influence,

he ought to have the right to correct his mistake, if he does so before the rights of others have attached by the final action on the part of the board." *Littell*, 198 Ill. at 210, 65 N.E. 78. The *Littell* court concluded "that the act of signing such petitions is not an irrevocable act, and that it may be revoked at any time before the jurisdiction of the body authorized to act has been determined by it." *Littell*, 198 Ill. at 208, 65 N.E. 78.

In *Augustine*, the Fifth District adopted the general rule of *Littell* and also relied on *Konald v. Board of Education of Community Unit School District 220*, 114 Ill.App.3d 512, 69 Ill.Dec. 837, 448 N.E.2d 555 (1983), when it interpreted section 7-2a(b) of the School Code to allow the withdrawal of signatures to a petition to dissolve at any time before the regional board conducts a hearing to determine the validity of the signatures. *Augustine*, 253 Ill.App.3d at 833, 193 Ill.Dec. 33, 625 N.E.2d 1154.

The Committee of Ten, however, asserts that we should follow the rationale of *Board of Education of Wapella Community Unit School District No. 5, De Witt County v. Regional Board of School Trustees of McLean-De Witt Counties*, 245 Ill.App.3d 776, 185 Ill.Dec. 698, 614 N.E.2d 1383 (1993), in support of its proposition that no signatures or signature withdrawals should be allowed after the date the petition is filed. *Wapella*, 245 Ill.App.3d at 782, 185 Ill.Dec. 698, 614 N.E.2d 1383. In *Wapella*, the Fourth District considered a challenge to section 7-2a(b) of the School Code similar to that presented here. On September 1, 1992, a group of petitioners filed a petition with their regional board seeking to dissolve their school district and annex its territory

pursuant to section 7-2a(b). On September 9, 1992, another group (the objectors) filed an objection to the petition challenging the validity of a number of signatures, which, if they were found to be invalid, would have invalidated the entire petition. On November 13, 1992, the regional board found that the petition for dissolution was legally sufficient, but it made no ruling regarding the request to withdraw names. *Wapella*, 245 Ill.App.3d at 778-79, 185 Ill.Dec. 698, 614 N.E.2d 1383.

On administrative review, the Fourth District concluded that the request to withdraw signatures was ineffective and the regional board's decision to annex the Wapella territory was not contrary to the manifest weight of the evidence. *Wapella*, 245 Ill.App.3d at 779, 185 Ill.Dec. 698, 614 N.E.2d 1383. Addressing the objectors' request to withdraw signatures, the *Wapella* court discussed the *Littell* and *Konald* decisions and reviewed the framework of the statutes at issue. It noted that the statutes in *Littell* and *Konald* provided for a hearing to take place on the sufficiency of the petition before the requested change would take effect. *Wapella*, 245 Ill.App.3d at 781, 185 Ill.Dec. 698, 614 N.E.2d 1383. In section 7-2a(b) of the School Code, however, the legislature provided that, *before* a petition is filed or even circulated, at least 10 days' notice by publication must be given and a public informational meeting must have been conducted. *Wapella*, 245 Ill.App.3d at 783, 185 Ill.Dec. 698, 614 N.E.2d 1383, citing 105 ILCS 5/7-2a(b) (West 1992). The *Wapella* court determined that, when the legislature provided that dissolution occurred upon the filing of a petition, a presumption of validity was created, which attached immediately upon the filing of the petition without

the further necessity of the regional board taking " final action," within the meaning of *Littell*, to determine the petition's validity. *Wapella*, 245 Ill.App.3d at 782, 185 Ill.Dec. 698, 614 N.E.2d 1383.

We believe that *Wapella* is the more reasoned approach and adopt it here. The registered voters of Puffer-Hefty were given at least 10 days' notice by publication in the Chicago Tribune regarding the public informational meeting. The registered voters of Puffer-Hefty were given the opportunity to attend a public informational meeting on January 27, 1997. The registered voters had an opportunity to ask questions at the time the petition was presented to them to sign. Further, and consistent with the rationale of *Littell*, the signers of the petition had every opportunity to withdraw their names from the petition for any reason before it was filed, which in this case was some six months later. Therefore, we believe that a presumption exists that the registered voters of Puffer-Hefty were informed about the contents of the petition before they signed it.

Based on the language of the statute, we agree with the Committee of Ten that a legislative presumption of validity attached to the section 7-2a(b) petition immediately upon its filing. See *Holbrook*, 305 Ill.App.3d at 748, 238 Ill.Dec. 982, 713 N.E.2d 228, citing *Wapella*, 245 Ill.App.3d at 782, 185 Ill.Dec. 698, 614 N.E.2d 1383. In the present case, the Committee of Ten filed its petition on July 25, 1997. Despite the first appeal and the Board's actions following remand, the filing date of July 25, 1997, is the controlling date by which we view the sufficiency of the petition.

Accordingly, once the petition was filed on July 25, 1997, "final action" had occurred, and no party should have been allowed to add her or his signature, withdraw her or his signature, or rescind her or his withdrawn signature. See *Wapella*, 245 Ill.App.3d at 782-83, 185 Ill.Dec. 698, 614 N.E.2d 1383; accord *Beghr Willowbrook Venture v. Village of Willowbrook*, 217 Ill.App.3d 614, 618, 159 Ill.Dec. 930, 576 N.E.2d 853 (1991). Additionally, as the *Wapella* court noted, the statute provides for the withdrawal of signatures when a counterpetition is filed in opposition to dissolution within 45 days after the filing of the petition to dissolve by a majority of registered voters. *Wapella*, 245 Ill.App.3d at 782, 185 Ill.Dec. 698, 614 N.E.2d 1383; see also 105 ILCS 5/7-2a(b) (West 1996). On the basis of our ruling, therefore, whatever steps the Board took when it reopened the signature and withdrawal-of-signature process were in error. However, because the record contains competent evidence supporting the Board's decision, we affirm. See *Merrifield*, 294 Ill.App.3d at 528, 229 Ill.Dec. 255, 691 N.E.2d 191.

Our interpretation of the legislation involved here is consistent with our ruling in *Beghr*, 217 Ill.App.3d 614, 159 Ill.Dec. 930, 576 N.E.2d 853, a case involving a different statute but warranting a brief discussion of its rationale. In *Beghr*, this court interpreted a statute that provided a method by which voters in a municipality could defeat the municipality's creation of a special service area. The statute at issue provided that the voters in the area could defeat the proposed special service area by filing, within 60 days thereof, a petition to object signed by 51% of the voters in the area (Ill.Rev.Stat.1989, ch. 120, par. 1309). On the fifty-eighth day, the voters filed such a petition that met the

requirements of the statute. Two days later, 10 of the signatories petitioned to withdraw their signatures from the objectors' petition, the allowance of which would have invalidated the objectors' petition. The trial court allowed the signatories to withdraw their signatures, and this court reversed. *Beghr*, 217 Ill.App.3d at 616, 159 Ill.Dec. 930, 576 N.E.2d 853.

This court reviewed the *Littell* line of cases and held that, under the plain and ordinary meaning of the statute, once an objectors' petition was timely filed, no signer was permitted to withdraw. *Beghr*, 217 Ill.App.3d at 618, 159 Ill.Dec. 930, 576 N.E.2d 853. We noted that the statute at issue contained no hearing requirement after the filing of the petition and that, once the legislative requirements of the statute were met, "final action" took place when the petition was filed. *Beghr*, 217 Ill.App.3d at 618-19, 159 Ill.Dec. 930, 576 N.E.2d 853. Just as in *Beghr*, when the Committee of Ten in the present case filed its petition to dissolve pursuant to section 7-2a(b) of the School Code, "final action" occurred and the signatures became fixed.

Therefore, using the filing date of July 25, 1997, as the controlling date, the record reflects that there were 1,947 registered voters in Puffer-Hefty. A majority consisted of 974 registered voters. The petition contained 1,101 valid signatures. The statute further reads, "[t]he regional board of school trustees shall have no authority to deny dissolution requested in a proper petition for dissolution filed under this subsection (b)." 105 ILCS 5/7-2a(b) (West 1996). Because the Committee of Ten complied with the notice and meeting provisions of section 7-2a(b) and because the Committee of

Ten procured the signatures of a majority of the registered voters, the Board was statutorily required to grant the petition. See also *Holbrook*, 305 Ill.App.3d at 746, 238 Ill.Dec. 982, 713 N.E.2d 228 (stating that on July 25, 1997, Puffer-Hefty filed a second petition, "which contained a properly designated committee of 10 and otherwise conformed to sections 7-2a(b) and 7-6(c) of the Code").

We believe that, to accomplish anything, the proponents of a petition must be able to rely upon the signatures obtained at the time of filing. If the proponents are continually forced to seek new signatures to take the place of withdrawals, they may never be able to prepare a proper petition. To permit withdrawals after the petition is completed and filed and the pursuit of securing signatures is abandoned would seem to make the system altogether unworkable. We do not believe that this implied "power" of the signer should be used to jeopardize the exercise of the proponents' statutory right.

Section 7-2a(b) of the School Code next provides that the Board "shall exercise its discretion in accordance with Section 7-11 on the issue of annexing the territory of a district being dissolved, giving consideration to but not being bound by the wishes expressed by the residents of the various school districts that may be affected by such annexation." 105 ILCS 5/7- 2a(b) (West 1996). Section 7-11 of the School Code states:

> "In the case of an elementary school district if all the eighth grade graduates of such district customarily attend high school in the same high school district, the regional board of school

> trustees shall * * * annex the territory of the district to a contiguous elementary school district whose eighth grade graduates customarily attend that high school, and that has an elementary school building nearest to the center of the territory to be annexed * * *." 105 ILCS 5/7-11 (West 1996).

In the present case, the Board found that the eighth-grade graduates of Puffer-Hefty customarily attend high school in Downers Grove. Under section 7-11 of the School Code, the Board was mandated to annex Puffer-Hefty to a contiguous elementary school district whose eighth-grade graduates customarily attend Downers Grove. The Board found that Downers Grove had an elementary school building nearest to the center of Puffer-Hefty. The Board decided that Downers Grove met the section 7-11 criteria for annexation more closely than any other elementary school district in the area. We find no error in the Board's determination. Therefore, the Board properly exercised its discretion pursuant to section 7-11 when it concluded that Downers Grove was the appropriate school district to which the territory of the dissolved Puffer- Hefty should be annexed. The Board's decision was not against the manifest weight of the evidence.

As our resolution of this issue is dispositive, we need not address Puffer-Hefty's remaining arguments on appeal.

For the foregoing reasons, we affirm the order of the circuit court of Du Page County.

Affirmed.

McLAREN and O'MALLEY, JJ., concur.

APPENDIX B — MEMORANDUM OPINION AND ORDER OF THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL DISTRICT, DUPAGE COUNTY, ILLINOIS ENTERED JANUARY 25, 2002

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL DISTRICT
DUPAGE COUNTY, ILLINOIS

IN CHANCERY

No. 01 MR 000149

Judge Ronald B. Mehling

PUFFER-HEFTY SCHOOL DISTRICT NO. 69
and BRUCE WEEKS,

Plaintiffs,

vs.

DUPAGE REGIONAL BOARD OF SCHOOL TRUSTEES OF DUPAGE COUNTY, ILLINOIS and its members, THE COMMITTEE OF TEN, and its members, and SCHOOL DISTRICT NO. 58,

Defendants.

MEMORANDUM OPINION & ORDER

Plaintiffs, Puffer-Hefty School District No. 69 and Bruce Weeks (collectively, "Puffer-Hefty"), filed a Complaint against the Defendants, the Committee of Ten (the "Committee"),

the DuPage Regional Board of School Trustees (the "Board") and School District No. 58, seeking Administrative Review of a petition filed by the Committee under section 7-2a(b) of the School Code for the dissolution and annexation of District No. 69, and a Declaratory Judgment that section 7-2a(b) is unconstitutional.

For reasons set forth below, the Court denies Puffer-Hefty's Complaint for Administrative Review and affirms the decisions of the Board. The Court also denies Puffer-Hefty's Motion for Declaratory Judgment because the parties' dispute can be decided on other grounds, without having to reach the constitutionality of section 7-2a(b).

SUMMARY OF FACTS

On July 25, 1992, the Committee filed a petition seeking dissolution of Puffer-Hefty School District No. 69 and its annexation to Downers Grove School District No. 58 (the "Petition") pursuant to sections 7-2a(b) and 7-11 of the School Code, because District No. 58 has fewer than 5,000 residents. *See* 105 ILCS 5/7-2a(b), 7-11 (West 2002). As of the Petition's filing on July 25, 1997, District No. 69 had 1,947 registered voters; a petition needed 974 signatures to be approved. The Petition as filed on that date contained 1,169 signatures. The parties later stipulated that, of those signatures, 3 individuals had moved or died before July 25, 1997, thereby invalidating those signatures, and that 65 signatures were duplicates and should only be counted once. Subtracting these 68, the parties agreed the petition as filed contained 1,101 valid signatures at the time of filing on July 25, 1997; 127 signatures beyond the 974 necessary to effectuate dissolution.

Appendix B

On October 6, 1991, the Board denied the Petition for lack of jurisdiction. Upon administrative review, the trial court reversed the Board's dismissal of the Petition and the Second District affirmed. *See Holdbrook v. Regl. Bd. of School Trustees of DuPage County*, 305 Ill. App. 3d 744, 745-46, 713 N.E.2d 228 (2d Dist. 1999).

Upon remand by the appellate court, the Board resumed hearings and designated December 10, 1999 as a cut-off date by which Plaintiffs could submit signature withdrawals, and the Committee could submit additional signatures to the original petition. The Board reconvened on July 17, 2000 to rule on the petition. The Board first made several decisions regarding signatures that were to be withdrawn and to be added from the petition. The board accepted the withdrawal of 71 signatures and included 93 signatures of people who Puffer-Hefty alleged had since died or subsequently moved out of the district since the July 25, 1997 filing.

Following the business of the signatures, the Board voted unanimously that the petition was signed by a majority of the registered voters of the district and was properly filed under Section 7-2a(b) of the Illinois School Code. *See* Transcript of Regional Bd. of School Trustees Hearing, July 17, 2000, pg. 511, lines 16-22. In accordance with the statute, the Board recognized the dissolution of District No. 69 and indicated it would exercise its discretion regarding the issue of annexation.

Several months later, after conducting additional hearings on the issue of annexation, the Board, on February 15, 2001, ordered Puffer-Hefty School District No. 69 be

annexed to Downers Grove School District No. 58, in accordance with Section 7-11 of the School Code. The Board issued its written order on February 22, 2001, and these proceedings followed.

DISCUSSION

I. Sufficiency of the Petition

This case deals with a petition for dissolution and annexation filed under section 7-2a(b) of the Illinois School Code 105 ILCS 7-2a(b) (West 2002). Section 7-2a(b) provides, in pertinent part:

> Any school district with a population of less than 5,000 residents shall be dissolved and its territory annexed as provided in Section 7-11 by the regional board of school trustees upon the filing with the regional board of school trustees of a petition. . . . No petition shall be adopted or signed under this subsection until the board of education or the petitioners, as the case may be, shall have given at least 10 days notice to be published once in a newspaper having general circulation in the district and shall have conducted a public informational meeting to inform the residents of the district of the proposed dissolution and to answer questions concerning the proposed dissolution. . . . The regional board of school trustees shall not act on a petition filed by a board of education if within 45 days after giving notice of the hearing required under Section 7-11 a

> petition in opposition to the petition of the board to dissolve, signed by a majority of the registered voters of the district, is filed with the regional board of school trustees. The regional board of school trustees shall have no authority to deny dissolution requested in a proper petition for dissolution filed under this subsection (b), but shall exercise its discretion in accordance with Section 7-11 on the issue of annexing the territory of a district being dissolved, giving consideration to but not being bound by the wishes expressed by the residents of the various school districts that may be affected by such annexation.

As Puffer-Hefty has pointed out in its brief this is the primary issue before the Court and is dispositive of the entire case, as it involves the sufficiency of the entire petition at issue here.[1] There is much dispute between the parties regarding whether signatures can be subsequently added, withdrawn and withdrawn but later reinstated to the petition before the December 10, 1999 cut-off date established by the Board. The Committee additionally argues, in the alternative, that the court should not consider any of the post-filing withdrawals or additions because the petition was effectuated upon filing. Regardless of any additional or withdrawn signatures, however, both parties at least agree the Petition contained 1,101 valid signatures on the day it was filed, July 25, 1997.

---

1. *See* Plaintiffs' Memo in Support of Complaint for Admin. Review, pg. 8.

Appendix B

A. Petition's Validity Upon Filing

Illinois appellate courts are divided on the issue of whether a petition filed under section 7-2a(b) is presumptively valid upon filing, with no statutory allowance for signature withdrawals or additions. *Compare Augustine v. Regl. Bd. of School Trustees of Madison County*, 253 Ill. App. 3d 827, 833, 625 N.E.2d 1154 (5th Dist. 1993) (holding 7-2a(b) petitions are not valid upon filing and signatures can be withdrawn from a filed petition), with *Bd. of Educ. of Wapella Community Unit School Dist. No. 5 v. Regl. Bd. of School Trustees*, 245 Ill. App 3d 776, 782, 614 N.E.2d 1383 (4th Dist. 1993) (holding 7-2a(b) petitions are presumed valid upon filing and regional board of trustees lacks jurisdiction to allow signature additions or withdrawals).

Our Supreme Court first articulated the general rule for the withdrawal of signatures from a petition in *Littell v. Bd. of Supervisors*, 198 Ill. 205, 65 N.E. 78 (1902), which dealt with the withdrawal of signatures from a petition presented to the governing board of a county seeking to create a new civil township. Before acting on the petition, the county board was required to give notice by posting and publication of the date upon which "final action" would be taken on the petition. Before the county board took final action on the petition, enough petitioners withdrew their signatures that the petition lost the necessary three-fourths majority and so the county board refused to create the township. *Littel*, 198 Ill. at 208.

The Supreme Court found that the act of signing such petitions "may be revoked at any time before the jurisdiction of the body authorized to act has been determined

by it." *Littell*, 198 Ill. at 209. The Court concluded, "the act of signing such petitions is not an irrevocable act, and that it may be revoked at any time before the jurisdiction of the body authorized to act has been determined by it." *Id.*

A large number of cases have followed the reasoning of the *Littell* court. *See, e.g., Crochet v. Abel*, 348 Ill. 269, 180 N.E. 852 (1932) (allowing signatures to be withdrawn and added before "final action"); *Konald v. Bd. of Educ. of Community Unit School Dist. 220*, 114 Ill. App. 3d 512, 448 N.E.2d 555 (2d Dist. 1983) (allowing signatures to be withdrawn before board took "final action" on a 7-2 petition). The *Wapella* court has correctly observed, however, that "[i]n each case, the statute also provides for a hearing on the sufficiency of the petition before the change requested [by the petition] takes effect." *Wapella*, 245 Ill. App. 3d at 781. Section 7-2a(b) has no such provision for a hearing to determine the sufficiency of a petition for dissolution and annexation.

In *Wapella*, the Fourth District held that a 7-2a(b) petition for dissolution creates a presumption of validity that attaches immediately upon filing, and that signatures cannot be withdrawn from the petition once it is filed. *Wapella*, 245 Ill. App. 3d at 782. In that case, a majority of residents filed a petition to dissolve an under populated school district on September 1, 1992. One month later, on November 2, 1992, some residents filed a request to withdraw their names from the petition for dissolution, which was denied. The regional school board of trustees (the "regional board") held a hearing on November 5 that was entirely directed to the question of

which territory the school district would be annexed to; the regional board declined to hear the objections of the residents who wished to remove their names from the petition and later ruled the petition as filed was legally sufficient and the district was dissolved and annexed. The trial court affirmed the regional board on administrative review. *Id.* at 779.

On appeal, the Fourth District held the request to withdraw signatures was ineffective and that the regional board's decision to annex the district was not against the weight of the evidence. *Wapella*, 245 Ill. App 3d at 779. The appellate court, examining the plain language and meaning of the statute, held that because the petition was valid upon filing, the school district was dissolved before petitions to withdraw signatures were filed. *Id.* at 781. The court recognized the strong preference for allowing withdrawals by petitioners and the *Littell* group of cases, but concluded that "the intent of the legislature 'in providing that the dissolution will occur upon the filing of the petition was to create a presumption of validity which attaches immediately upon the filing of the petition without further necessity of the Regional Board taking 'final action,' within the meaning of *Littell* to determine the petition's validity.". *Id.* at 782. The Fourth District reasoned the fact that section 7-2a(b) does not provide for a hearing on the sufficiency of a petition—a requirement in all of the *Littell* line of cases—was enough to prevent requests to withdraw after the petition for dissolution has been filed. *Id.*

The only other Illinois case to: consider the withdrawal of signatures from a 7-2a(b) petition is *Augustine*, 253 Ill. App. 3d 827, which was decided only a few months after

Wapella, but reached a completely opposite conclusion. In *Augustine*, the Fifth District held that voters could not withdraw their signatures after a 7-2a(b) petition is filed and that a petition is not presumed valid upon filing. In that case, a 7-2a(b) petition to dissolve an under populated school district was signed by a majority of voters and filed with the regional school board of trustees. However, several petitioners withdrew their signatures before the regional board could hold a hearing on the petition, and so the regional board subsequently denied the petition because it did not contain enough valid signatures. *Augustine*, 253 Ill. App. 3d at 829-30.

On appeal, the petitioners unsuccessfully argued that the regional board should determine the sufficiency of a petition for dissolution with regard to the requisite number of signatures as of the date of filing the petition, and not allow the withdrawal of signatures after the date of filing. The Fifth District, relying upon *Littell* and *Konald*, found the regional board's determination to allow withdrawals after the original petition was filed was reasonable. The court concluded "a petitioner is allowed to withdraw his name from a petition before the petition is acted on." *Augustine*, 253 Ill. App. 3d at 833.

In the case at bar, Puffer-Hefty urges this court to follow *Augustine*, arguing that signatures should be allowed to be withdrawn after the petition is filed and before the Board takes "final action" on the petition, but additional signatures should not be allowed post-filing of the petition. The Committee points to the *Wappella* court's reasoning, arguing

the petition was valid upon filing, and in the alternative, even if was not valid upon filing, the court should allow both the withdrawal and addition of signatures after the petition is filed but before the Board takes "final action." The Court agrees with the Committee's argument and the sound reasoning and research of the *Wapella* court.

The Court agrees with the Defendants argument that a legislative presumption of validity attached to a section 7-2a(b) petition immediately upon its filing, without the necessity of regional board action. *See Holdbrook*, 305 Ill. App. 3d at 748, *citing Wapella*, 245 Ill. App. 3d at 782. This presumption negates the opportunity for individuals to withdraw or add their signatures after the date the petition has been filed. The Court bases this conclusion upon the plain language of section 7-2a(b), that "any school district with a population of less than 5,000 residents *shall be dissolved* and its territory annexed . . . *upon the filing* with the regional board of school trustees of a petition . . .". (emphasis added). 105 ILCS 5/7-2a(b) (West 2002). As noted in *Wapella*, this language indicates that the dissolution will occur upon filing, "subject to a condition subsequent of filed and proved objections to the petition." *Wapella*, 245 Ill. App. 3d at 782. Accordingly, the Board in this case needed only to determine whether the Petition was signed by a majority of the registered voters at the time it was filed. Since the Petition contained 1,101 valid signatures, 127 more than the 974 required by law, it was properly filed and the Board was without jurisdiction to allow the addition or subtract of signatures once the Petition was filed. *Holdbrook*, 305 Ill. App. 3d at 748.

Appendix B

The *Augustine* court based part of its reasoning upon language in 7-2a(b) that speaks of dissolution upon a "proper" petition, not on any petition, and that "a determination must be made that there are sufficient proper signatures before the regional board could be required to meet [pursuant to 7-11] and determine the disposition of the territory of a school district dissolved under section 7-2a(b)." *Augustine*, 253 Ill. App. 3d at 833. However, section 7-2a(b) does not require any such determination to be made by the Board before it meets to discuss the dissolved district's annexation under section 7-11. Section 7-2a(b) does say a board "shall have no authority to deny dissolution requested in a *proper petition* for dissolution." (Emphasis added.) 105 ILCS 5/7-2a(b) (West 2002). However, the Court believes the "proper petition" language of section 7-2a(b) is in reference to whether the petition contains a properly designated committee of ten and otherwise conforms to section 7-2a(b) and 7-6(c) of the School Code and that this interpretation is consistent with the ruling by the Second District in *Holdbrook*. *See Holdbrook*, 305 Ill. App. 3d at 746 (holding that the July 25, 1997 petition filed by the Committee in this case contained a properly designated committee of ten and conformed to the other statutory requirements).

This question whether a 7-2a(b) petition is valid upon filing is one of statutory interpretation and the public policy behind why signatures have been allowed to be withdrawn from petitions in the past, and whether the Court's ruling today serves that public policy. When construing a statute, the best indicator of legislative intent is the statutory language itself. When that language is clear and unambiguous, courts will not read into the statute exceptions, limitations, and

conditions. *People v. Goins*, 119 Ill.2d 259, 265, 518 N.E.2d 1014 (1988). When interpreting statutory language, the language should be given its plain and ordinary meaning. *Beghr Willowbrook Venture v. Village of Willowbrook*, 217 Ill. App. 3d 614, 576, N.E.2d 853 (2d Dist. 1991).

As the *Littell* court observed nearly one hundred years ago, "Each petitioner acts on his individual responsibility . . . if he should be induced to sign [a petition] under a misapprehension or through undue influence, he ought to have the right to correct his mistake, if he does so before the rights of others have attached by a final action on the part of the board." *Littell*, 198 Ill. at 210. Petitioners have historically been allowed to withdraw their names because signatures were often collected before the citizenry had received any real information about the subject matter for which they were signing on. In a vast majority of the *Littell* line of cases, signatures were collected, a petition was filed, and *then* a public hearing was held on the issue before the requested change took effect. Once the public learned more about the subject matter, many of them changed their minds about supporting the issue and wished to remove their name, and some people wish to add their name because they have decided to support the issue after hearing more about it. *See, e.g.*, *County Court of Dekalb County v. Progue*, 115 Ill. App. 391, 99 (2d Dist. 1904), rev'd. on other grounds, *Kinsloe v. Pogue*, 213 Ill. 302 (1904) ("Signatures to such petitions are easily obtained . . . [people] often then conclude that they have been hasty in signing, or are in error, or that they do not wish the petition granted.")

Appendix B

Such was exactly the scenario in *Konald*, a case decided well before section 7-2a(b) was even enacted and heavily relied upon by the *Augustine* court. In *Konald*, a petition was brought under section 7-2 of the School Code to detach certain territory from one school district and annex it to another. Over two-thirds of the registered voters in the area sought to be detached *initially* signed the petition. Later, *during* the actual hearing on the matter held by the Cook County Regional Board, a document signed by 78 of the initial petitioners was submitted requesting their names to be withdrawn from the petition to detach. *Konald*, 114 Ill. App. 3d at 514. The court held the request to withdraw was properly submitted and that the petition before the board was thus legally insufficient, so the Board had no authority to act further on the petition. *Id.* As the Committee notes in their brief, *Konald* does not stand for the proposition that section 7-2a(b) mandates withdrawals. Rather, *Konald* stands for the proposition that the statute in effect at the time of that ruling was *structured* to allow withdrawals. The statutory scheme at issue in the instant case, section 7-2a(b), is markedly differently from that typically dealt with by the *Littell* line of cases, and is notably different from its sister legislation, section 7-1 (which governs dissolution and annexation of school districts containing more than 5,000 residents).

The language of section 7-2a(b) differs from that contained in section 7-1 and 7-2 of the School Code. As the *Wapella* court observed, instead of a presumption of validity, those sections provide for the regional board to take a "final action" before a boundary change occurs. *Wapella*, 245 Ill. App. 3d at 781. Unlike he statutory framework of these other sections, section 7-2a(b) shows a legislative intent to have

the dissolution occur upon filing, subject only to the Board's review of the petition's propriety. Not only does the language of section 7-2a(b) prevent the withdrawal of names subsequent to the petitions filing, but also the legislature has specifically amended the Act to ensure adequate participation by all signatories to the petition without the need for such withdrawals that have been historically necessary under *Littell* and its progeny.

In 1989, the General Assembly added section 7-2a(b) to School Code to allow smaller school districts to avoid the laborious and stringent requirements of dissolution and annexation required by section 7-1 for larger school districts. Section 7-2a(b) was amended three years later and now provided that no petitions for dissolution shall be signed before would-be petitioners have "conducted a public informational meeting" after giving ten days notice of the meeting by publication. *See* Pub. Act 87-1215, eff. November 23, 1992 (1992 Ill Legis Sev. 3279, 3279 (West) (amending 105 ILCS 5/7-2a(b) (West 1992)).

Prior to that time, the statute resembled many other statutes that provided for a hearing *after* a petition was filed. The sole purpose of which was to ensure that all signatories were informed participants. Individuals who decided they wanted to withdraw their signatures after attending the informational meeting had the right under the old statutory framework. The 1992 amendment eliminated the post-filing hearing requirement and eliminated the opportunity for post-fling withdrawals by providing for public notice of and an informational meeting prior to a 7-2a(b) signing period. Because voters are now given the opportunity to attend a

public informational meeting and are presumed to be informed about the contents of the petition *before* they sign it, they are not be allowed to withdraw or add their signatures following the date of the filing. *See Wapella*, 245 Ill. App. 3d at 782-83.

The *Wapella* court analyzed the legislative intent of the 1992 amendment, and while the *Wapella* court recognized "the strong preference for allowing withdrawal of signatures by those petitioning a public body set for in *Littell* and its progeny," the court stated that the amendment "would seem to indicate a legislative recognition that the provision of Section 7-2a(b) of the Code, which provides that the dissolution takes place upon filing of the petition is strict, and those signing petitions should be well informed before they do so." *Wapella*, 245 Ill. App. 3d at 783.

This Court's interpretation of section 7-2a(b) as preventing the withdrawal of signatures is also consistent with the Second District's ruling in *Beghr Willowbrook Venture*, 217 Ill. App. 3d 614. At issue in that case was whether petitioners could withdraw their signatures from an owner's petition objecting to the creation of a special service area under section 9 of the Special Services Area Tax Act, after that petition had been filed in accordance with the act. *Id.* at 615. The trial court ruled that petitioners could withdraw their names, but the Second District reversed, holding that once such a "veto petition" was timely filed, no signer was permitted to withdraw under the act. *Id.* at 618. The Second District, noting that no statutory provision required a hearing after the filing of the petition, recognized the long line of cases allowing the withdrawal of signatures,

but ultimately concluded that none of those cases contained statutory requirements similar to those in section 9. *Id.* at 617. The court considered the language of the act to be clear: once the petition containing the requisite number of signatures was filed, the legislative requirements of the statute have been met. Thus, the Second District held that "final action" took place when the petition was filed. *Id.* at 618-19.

Finally, the Court acknowledges that the Second District has—either overtly or implicitly—adopted the holding of *Wapella* in its recent *Holdbrook* decision. At the end of its reasoning of the *Holdbrook* case, the Second District discussed the issue of a regional board's jurisdiction to act upon a petition. The court cites to both *Augustine* and *Wapella* in the same string citation. *See Holdbrook*, 305 Ill. App. 3d at 748. At first glance this may seem confusing, as the *Augustine* and *Wapella* courts reached exactly opposite decisions on the issue of whether signatures can be withdrawn or added to a properly filed 7-2a(b) petition. What is instructive, however, is how the Second District characterized the holding of the two cases in parenthetical summations.

The Second District summarized *Augustine* as standing for the proposition that a regional board has no jurisdiction over a section 7-2a(b) petition that is lacking a sufficient number of voter signatures. The court summarized *Wapella*, however, as standing for the proposition that: "board lacks jurisdiction to allow addition or withdrawal of signatures from a section 7-2a(b) petition because a presumption of validity attached immediately upon the filing of the petition without the further necessity of a regional board taking action." *Holdbrook*, 305 Ill. App. 3d at 748. This simple,

one line summation of the Second District addresses the exact points raised by this Court today in its ruling: that the statutory scheme of section 7-2a(b) is different from other statutes in that it does not require a post-filing hearing on the matter to effectuate the change. Under this statutory scheme, a "final action" occurs under the language of Section 7-2a(b) at the point at which a petition is properly filed. At that point in time, the number of signatures on the petition is frozen. Once the petition is filed, the district is dissolved, and so there is no petition for names to either be added to or withdrawn from at a later time.

The Court is mindful of the strong reluctance to "cut off the rights of petitioners to change their minds," but the Court's ruling that signatures cannot be withdrawn from a properly filed 7-2a(b) petition does not completely cut off petitioners rights under the statute, as voters are still able to oppose a petition for dissolution once it has been filed. The statute provides that a regional board must not act on a properly filed petition if, within 45 days of the filing, a counter-petition is filed by a majority of the registered voters of the district in opposition to the dissolution. This provision of the statute addressing a person's right to change their mind, combined with the pre-petition informational hearing requirement of the statute meets the public policy first propagated by *Littell* that voters be allowed to make informed decisions when it comes to which petitions they will support or oppose.

Applying *Wapella* and *Holdbrook* to the instant case, the Board should only have considered the number of valid signatures on the date of its submission, July 25, 1997. The

Petition here contained 1,101 valid signatures, which exceeded the 974 required by law to effectuate dissolution and annexation of the district, and was properly granted.

B. Petition's Validity After Withdrawn, Additional and Reinstated Signatures

The Court notes that even if it were to rule a petition filed under a statutory scheme like 7-2a(b) was not valid upon filing, the Committee would nonetheless prevail under its alternative argument that the Court should consider signatures that were added after the petition was filed. Puffer-Hefty argues that not only should the Court follow the long line of case law allowing signatures to be withdrawn, but that it should ignore the case law authority that has allowed signatures to be with added.

Several years after the Supreme Court decided *Liddell*, it addressed the ability of petitioners to vacillate in *Crocher v. Abel*, 348 Ill. 269 (1932), where, in regards to a petition for annexing a territory to a city, the Court observed "no reason why the signer of a petition may not change his mind a second time if he thinks he is better advised or informed about the subject. Up to the time of final action thereon he should have control of the matter as to where or not his signature shall remain on the petition." *Crocher*, 348 Ill. at 274. *See also*, *Bd. of Educ. of Avoca School Dist. No. 37, Cook County v. Regional Bd. of School Trustees of Cook County*, 82 Ill App. 3d 1067, 403 N.E.2d 578 (1st Dist. 1980) (holding that petitioners could add, withdraw and later reinstate names on a petition for detachment and annexation within a reasonable time frame or "cut off date"). Under this

line of authority, the Court is not persuaded by Puffer-Hefty's argument that signatures can be withdrawn but not added through supplemental petitions.

In the instant case, after the case came down from the *Holdbrook* appeal, the Board set a reasonable cut-off date by which it would no longer accept additions, withdrawals or reinstatements to the petition. Puffer-Hefty argues the large amount of time between the filing of the petition and the cut-off date is unreasonable. However, the passage of such a large amount of time between the filing and the cut-off date is easily explainable because of the interlocutory appeal, not because of a lack of diligence by the Board. The *Holdbrook* case was decided in June 29, 1999. The Board resumed a hearing to consider the propriety of the Petition in August 1999, and established December 10, 1999 as the cut-off date for signature changes. There is nothing in the record to indicate this time frame is unreasonable.

The parties agree that the petition as filed on July 25, 1997 had 1,101 signatures. However, based upon the briefs filed by both parties, neither side agrees on the exact number of signatures once all of the withdrawals, additions and reinstatements are factored in. Since the Court's decision does not turn on finding an exact number it will not examine the issue further. However, the final number arrived at by both sides, once the supplemental petitions are factored in with the additional signatures, places the total number of signatures well over the 974 required by law. *See* Plaintiffs' Memo in Support of Complaint, pg. 9; Defendant's Response to Plaintiffs' Memo in Support of Complaint, pg. 9.

Appendix B

II. Proper Filing of the Petition Under Section 7-2a(b)

Puffer-Hefty argues that the Committee improperly filed its petition for dissolution and annexation under 7-2a(b) in order to avoid the more stringent voter requirements of section 7-1. The Court rejects Puffer-Hefty's argument because the Committee was well with its rights to file under section 7-2a(b).

On the date the Petition was filed, July 25, 1997, District 69 had 1,947 residents. A small school district with fewer than 5,000 residents can be dissolved pursuant to section 7-1(a) or 7-2a(b). *See Holdbrook*, 305 Ill. App. 3d at 747, citing with approval *Helmig III v. John F. Kennedy Comm. Consolidated School Dist. No. 129*, 241 Ill. App. 3d 653, 661, 610 N.E.2d 152 (3d Dist. 1993) (sections 7-1(a) and 7-2a(b) are not in conflict and each provides small school districts with an alternatives means of effectuating dissolution and annexation).

The Court agrees with the Committee's argument that because the law provides a "school district with less than 5,000 residents with alternative means of effectuating dissolution and annexation," *Helmig*, 241 Ill. App. 3d at 661, the Committee properly invoked the procedures of section 7-2a(b) to effectuate the dissolution and annexation of District 69. As the *Helmig* court noted, "[w]here ~~a petition~~ to change school district boundaries is filed pursuant to certain statutory provisions, those provisions control. *Id.* at 662. Puffer-Hefty errs to the extent it argues any provisions or requirements of section 7-1(a) apply to the petition at bar.

The Court is not persuaded by Puffer-Hefty's semantic argument that simply because the Committee used the term "annexation" in its Petition and underlying documents that it has, in effect, really filed a petition under section 7-1(a). Annexation is part-and-parcel of any dissolution under section 7-2a(b). Indeed, the first line of the statute itself states that "[a]ny school district with a population of less than 5,000 residents shall be dissolved and its territory *annexed*." (Emphasis added.). 105 ILCS 5/7-2a(b). The statute further requires that, "any petition for dissolution filed under this Article *must* specify the school district or districts to which all of the territory of the district proposed to be dissolved will be *annexed*." 105 ILCS 5/7-2a(a). At oral argument before the Court, Puffer-Hefty argued there was a difference between filing a 7-2a(a) petition and a 7-2a(b) petition. This argument has no foundation in fact or law and is also rejected.

Because District 69 had fewer than 5,000 residents, the Committee had the choice between filing a petition pursuant to section 7-1(a) or section 7-2a(b) of Article 7 of the School Code. Thus, the Committee's selection of section 7-2a(b) was legally proper.

III. Sufficiency of the Evidence

Puffer-Hefty argues the decision of the Board was against the manifest weight of the evidence. A regional board of school trustees' decision on a petition for dissolution and annexation is an administrative decision for purposes of the Administrative Review Law (735 ILCS 5/3-101, *et seq.* (West 2002)). *See* 105 ILCS 5/7-11 (West 2002). A reviewing

court considers the factual findings of an administrative agency to be *prima facie* true and correct. 735 ILCS 5/3-110 (West 2002). The reversal of an administrative agency's factual finding is warranted only where the finding is against the manifest weight of the evidence and it is clearly evident that the agency should have reached the opposite conclusion. *City of Freeport v. Ill. St. Lab. Rel. Bd.*, 135 Ill. 2d 499, 507 (1990).

A. The Benefit/Detriment Test

Puffer-Hefty incorrectly argues the Court should apply the "benefit/detriment" test to determine whether the Committee's petition should be granted. Puffer-Hefty relies upon *Bd. of Educ. of Community High Sch. Dist. No. 94 v. Regl. Bd. of Sch. Trustees of DuPage County*, 243 Ill. App. 3d 229, 235, 613 N.E.2d 754 (2d Dist. 1993) for its theory that the Committee's Petition should not be granted unless the Committee can prove that the overall benefit to both District 58 and the residents within District 69 school district clearly outweighs any detriment to the residents of District 69 and the surrounding community.

However, *Dist. No. 94* involves a section 7-6 detachment and annexation petition, not a 7-2a(b) dissolution and annexation petition. The Court is not persuaded by Puffer-Hefty's attempt to analogize these two sections because of their "similar language." In section 7-6 cases, the regional board must determine whether it is in the best interest of the schools and the educational welfare of the pupils that *detachment* even occurs. However, in section 7-2a(b) cases, the regional board must only consider the school's needs and

the educational welfare of the pupils in selecting one or more school districts to which the *already dissolved* territory should be *annexed*. The benefit/detriment test does not apply to a section 7-2a(b) dissolution because the Board is without legal authority to deny a properly filed petition to dissolve. Unlike a 7-6 case, the Board never considers the question of whether dissolution should even occur, merely which district the territory should be annexed to.

B. The Board's Decision to Dissolve District No. 69

When it comes to a section 7-2a(b) petition, the Board's hands are mostly tied. The Board has no choice but to accept a properly filed petition for dissolution, "even if the board feels the boundary change would adversely affect the communities involved." *Holdbrook*, 305 Ill. App. 3d at 746-47, citing 105 ILCS 5/7-2a(b) (West 1996).

Here, the committee of ten was properly designated, the information meetings had taken place in accordance with the statute, and the Petition was filed with the requisite number of signatures. The Board had no authority under the statute to deny the Petition, and correctly granted the Petition to dissolve on July 17, 2000. The Court finds no reason the Board should or could have acted differently, and finds its decision is supported by the manifest weight of the evidence.

C. The Board's Decision to Annex District No. 69 to District No. 58

Once the district has been dissolved, only then can the Board exercise what little discretion it has under section

7-11 in regards to annexation. In a limited number of situations, however, when the dissolved school district is an elementary school district and all the eighth grade graduates of that district customarily attend high school in the same high school district—like District 69 in the case at bar—the Board's hands are tied, as section 7-11 mandates the Board annex the dissolved territory to the contiguous elementary school district whose eighth graders customarily attend that high school. 105 ILCS 5/7-11 (West 2002).

Here, it is undisputed that District 69 is an elementary school district whose eighth grade graduates customarily attend High School District 99. For this reason, the Board was mandated to follow the specific instructions of section 7-11 to ascertain the proper annexing school district. In the instant case, the record shows the Board received evidence from Dushan Budimir that District 58 most closely met the criteria set forth in section 7-11 for annexation of the type of elementary school district in this case. The Court finds the Board properly exercised its discretion in accordance with section 7-11 in concluding that District 58 was the appropriate school district to which the territory of the dissolved District 69 should be annexed, and that the Board's decision was consistent with the manifest weight of the evidence.

IV. Information Requirements of Section 7-2a(b)

Puffer-Hefty argues the Committee did not meet the "notice and information" requirements of section 7-2a(b) because the Committee did not publish its meeting notice in a local paper, and that the information provided at the meeting was not—in its opinion—sufficient.

Appendix B

A. The Publication Requirement

Section 7-2a(b) requires would-be petitioners to publish ten days notice of an informational meeting "once in a newspaper having circulation in the district" before a petition can be adopted or signed by residents of the district. 105 ILCS 5/7-2a(b) (West 2002). Puffer-Hefty argues the notice should have been placed in a "local" paper, presumably like the *Downers Grove Reporter* or the *Daily Herald.* However, the statute does not require the notice be placed in a "local paper," simply one that has a "general circulation." in the district.

Here, the Committee published the meeting notice in the *Chicago Tribune* and it was displayed in the *Tribune's* standard typeface for legal notices. Puffer-Hefty can only draw an implicit correlation between the notice publicized and the attendance of 35 residents at the meeting that is not supported by either fact or law, but is purely speculation on its part.

B. The Information Meeting Requirement

Pursuant to section 7-2a(b), the board or the petitioners must conducted a "public informational meeting to inform the residents of the district of the proposed dissolution and to answer questions concerning the proposed dissolution." 105 ILCS 5/7-2a(b) (West 2002). The information provided by the Committee at the informational meeting in the instant case is sufficient to satisfy the statutory requirements. The record in this case shows that 35 residents attended the informational meeting. Many of the residents apparently were

already familiar with the proposed dissolution because the Committee had engaged in the same petition process and had conducted informational meetings the year before, in 1996.

Puffer-Hefty argues the meeting was insufficient because the Committee only provided information on dissolving District 69 and annexing it to District 58. Puffer-Hefty argues the Committee should have provided information on possible annexation to other districts.

However, under the annexation statute, section 7-11, District 58 was the only viable district that District 69 could be annexed to. Section 7-11 states that "In the case of an elementary school district if all the eighth grade graduates of such district customarily attend high school in the same high school district, the regional board of trustees *shall* . . . annex the territory of the district to a contiguous elementary school district whose eighth graders customarily attend that high school. . . ." 105 ILCS 5/7-11 (West 2002).

The scenario contemplated by the statute is exactly the situation of the case at bar. Here, District 69 is an elementary school district whose eighth grade graduates customarily attend District 58's high school, and thus the Board was statutorily bound to annex District 69 to District 58. Because the Board was bound by law to annex the dissolved District 69 to District 58, the Committee only provided information on annexation to District 58, its educational programs and benefits. The record also reveals that if the committee did not have the information desired by those in attendance, it provided those people with relevant contact information where the people could get answers to their questions.

Therefore, the Court finds the Committee fully complied with the statutory obligation to publish notice of, and conduct, an informational meeting on the dissolution and annexation of District 69.

V. Sufficiency of the Board's Written Decision

Puffer-Hefty argues the written, "final administrative decision" of the Board, as required by section 7-11, was not legally sufficient, and failed to give facts and findings as to its legal conclusions. Paragraph three of section 7-11 provides that "[t]he decision of the regional board of school trustees in such matters shall be issued within 10 days after the conclusion of the hearing and deemed an 'administrative decision' as defined in Section 3-101 of the Code of Civil Procedure." 105 ILCS 5/711 (West 2002).

On February 22, 2001, the Board issued a five page Order detailing its findings of fact that justified the ruling in the matter. The Court disagrees with Puffer-Hefty's assertion the Order (marked as "Exhibit 1" in Plaintiffs' Complaint) fails to set forth the Board's findings of facts and conclusions of law. In its Order, the Board states, *inter alia*, the statutory provisions that have been met in the course of filing a successful petition has the requisite number of signatures, that the Committee of Ten had been properly designated; that the Board was without authority to deny the petition for dissolution; that the district's eighth graders customarily attend the high school in the district to which it will be annexed; that the Board heard testimony from the community regarding the annexation; and that a community of interests exists between residents of District 69 and District 58.

Appendix B

See, Plaintiffs' Complaint for Admin. Review, Exhibit 1; Defendant's Response to Plaintiffs' Memo. in Support of Complaint, pgs. 36-37.

Puffer-Hefty argues that under section 7-11, the board must "hear evidence as to the school needs and conditions of the territory and of the area within and adjacent thereto, and shall take into consideration the educational welfare of ht pupils of the territory . . ." 105 ILCS 5/7-11 (West 2002). Despite hearing such evidence, the Board may, nonetheless, rule contrary to the evidence it hears, as the Board may "give consideration to but not be bound by the wishes expressed by the residents of the various school districts that may be affected by such annexation." 105 ILCS 5/7-2a(b) (West 2002).

The point in the instant case, however, is moot. Because here, the Board's hands were mostly tied and bound by the provisions of the statute. The Board had no choice but to accept the properly filed petition under section 7-2a(b), which the Court has already ruled was valid upon filing, even if "[the Board felt] the boundary change would adversely affect the communities involved." *Holdbrook*, 305 Ill. App. 3d at 746-47. The Board was further bound by section 7-11, which mandated District 69 be annexed to District 58 because of the eighth grade children going to the local high school (which the Board noted in its February 22, 2001 Order).

For these reasons the Court finds the Board's February 22, 2001 Order sufficiently stated the Board's findings of facts and application of law that justified its decision.

Appendix B

VI. Constitutionality of Section 7-2a(b)

Puffer-Hefty argues this Court should declare section 7-2a(b) unconstitutional for violating the equal protection clause of the Illinois and U.S. Constitutions, and because it constitutes special legislation that violates Section 13 of Article IV of the Illinois Constitution. The Court does not need to reach these questions of constitutionally, however, as it can decide the parties' dispute on alternative, non-constitutional grounds.

Existing legislation enjoys a presumption of constitutional validity. *People v. R.L.*, 158 Ill. 2d 432, 437 (1994). Circuit Courts have been cautioned not to compromise the stability of the law by declaring legislation unconstitutional when the particular case does not require it. *See, e.g.*, *People ex rel. Waller v. 1990 Ford Bronco*, 158 Ill. 2d 460, 464 (1994), citing *Exchange Nat'l Bank v. Lawndale Nat'l Bank*, 41 Ill.2d 316, 321 (1968). The Illinois Supreme Court has observed, "When Circuit Courts prematurely invalidate legislation in cases that can be disposed of on a non-constitutional basis, the effect is to circumvent the normal appellate process and require the Court to accept cases it might otherwise decline to hear." *Trent v. William*, 172 Ill. 2d 420, 426 (1996). Based upon this concern, *Trent* admonished the Circuit Courts not to declare statutes unconstitutional unless absolutely necessary. *Trent*, 172 Ill. 2d at 425. *See also*, *Hearne v. Illinois St. Bd. of Educ.*, 185 Ill. 2d 443, 454 (1999) (reversing circuit court's declaration statute was unconstitutional because ruling was not essential to the resolution of plaintiff's lawsuit).

Appendix B

In *Trent*, the Supreme Court determined that because the circuit court unnecessarily decided a constitutional question where the court also denied the plaintiff relief on alternative, non-constitutional grounds, it was appropriate for the Court to decline direct appellate jurisdictions. *Trent*, 172 Ill. 2d at 426-27. The Court explained that because the Circuit Court had provided two non-constitutional ground for denying plaintiff relief, the constitutional ground for its holding was not necessary for the resolution of the case, and therefore a direct appeal under Rule 302(a) jurisdiction was improper. *Id.* at 426.

The case at bar is similarly procedurally similar to the situation in *Trent*. Here, the Court has provided several non-constitutional grounds for denying Puffer-Hefty relief, and so it would be inappropriate under *Trent* for the Court to declare section 7-2a(b) unconstitutional as it is unnecessary for the resolution of the case. Moreover, several Illinois appellate courts have construed section 7-2a(b) since its inception and none have questioned its constitutional validity. *See, e.g.*, *Holdbrook*, 305 Ill. App. 3d at 747, citing with approval *Helmig*, 241 Ill. App. 3d at 661 (holding sections 7-1 and 7-2a(b) are not in conflict and should be read and construed in harmony together; each provides small school districts with alternative means of effectuating dissolution and annexation). Therefore, the Court declines to rule on the constitutionality of section 7-2a(b) because several non-constitutional grounds exist for denying Puffer-Hefty's desired relief.

Appendix B

CONCLUSION

The Court denies Plaintiffs' Motion for Administrative Review and affirms the DuPage County Regional Board of School Trustees' decisions to grant the Committee of Ten's Petition to Dissolve Puffer-Hefty School District No. 69. The Court affirms the Board's decision to annex the dissolved territory of District No. 69 to Downers Grove Elementary School District No. 58. The Court denies Plaintiffs' Motion for Declaratory Judgment that section 7-2a(b) is unconstitutional because the parties' dispute can be decided on non-constitutional grounds. The Court also denies Defendants' Motion for Attorneys Fees under Supreme Court Rule 137.

Respectfully Submitted,

s/ Ronald B. Mehling
Judge, Ronald B. Mehling
Entered: January 25, 2002

APPENDIX C — RELEVANT DOCKET ENTRY DATED TUESDAY, OCTOBER 7, 2003

SUPREME COURT OF ILLINOIS

TUESDAY, OCTOBER 7, 2003

THE FOLLOWING CASES ON THE LEAVE TO APPEAL DOCKET WERE DISPOSED OF AS INDICATED:

* * *

No. 96597 – Puffer-Hefty School District No. 69 et al., petitioners, v. The DuPage Regional Board of School Trustees of DuPage County et al., etc., respondents. Leave to appeal, Appellate Court, Second District. (2-02-0196)

Petition for leave to appeal denied.

* * * *

APPENDIX D — ADMINISTRATIVE DECISION OF THE REGIONAL BOARD OF SCHOOL TRUSTEES, DUPAGE COUNTY DATED FEBRUARY 22, 2001

REGIONAL BOARD OF SCHOOL TRUSTEES
DuPAGE COUNTY

Petition 97-2

In the matter of the Petition to Dissolve Puffer-Hefty School District No. 69, DuPage County, Illinois

ORDER

This matter having come before the Regional Board of School Trustees ("RBST") for DuPage County on petition of the Committee of Ten ("Cmte of Ten") praying for dissolution of the Puffer Hefty School District Number 69 pursuant to section 5/7-2a(b) of the School Code (105 ILCS 5/7-2a(b));

The Board having convened hearings and received evidence and heard testimony and argument on the dissolution and annexation of Puffer Hefty School District 69;

The Board having given consideration to, but not having been bound by the wishes expressed by the residents of the various school districts that may be affected by such annexation;

Appendix D

The RBST finds as follows:

1. District 69 has a population of less than 5,000 residents;

2. Prior to signing of the petition, the Cmte of Ten gave at least ten (10) days' notice by publication in a newspaper (*The Chicago Tribune*) having general circulation in the district;

3. Prior to circulating the petition, the Cmte of Ten conducted a public informational meeting to inform the residents of the proposed dissolution and to answer questions concerning the proposed dissolution;

4. Berardo J. DeSimone Regional Superintendent of Schools for DuPage County has supervision of Puffer Hefty School District 69;

5. The petition was filed with and shall be decided solely by the RBST for DuPage County;

6. The petition was signed by a majority of the registered voters of the district based on the numbers stipulated to by the parties in joing Exhibit 1; as determined by the following calculation, acceptance, and rejection of signatures.

    (a) Only those persons who were registered voters within the District on the date the petition was filed (July 25, 1997) were considered eligible to sign the petition;

(b) Withdrawal, addition and rescission of signatures was permitted in order to ascertain the will of the people.

(c) The cut-off date used to determine the number of signatures was December 10, 1999.

(d) No withdrawals, additions or rescissions submitted after the December 10, 1999 deadline were considered.

7. The petition filed by the Cmte of Ten is a proper petition for dissolution filed under subsection (b) of section 7-2a of the School Code thereby conferring jurisdiction upon the RBST of DuPage County to decide this matter (105 ICS 5/7-2a(b))

8. Pursuant to the statute, the RBST is without authority to deny this petition (105 ILCS 5/7-2a(b))

9. There is no special charter district the restrictions of which would make annexation to a contiguous district impossible;

10. All those eighth graders graduated of Puffer Hefty School District 69 customarily attend high school in only one high school district (Community High School District 99);

11. Of the elementary school districts contiguous to Puffer Hefty School District 69, only those eighth graders graduated of Downers Grove Grade School

District 58, and Woodridge School District 68 customarily attend high school in Community High School District 99;

12. Of the elementary school districts contiguous to District 69 whose graduates attend Community High School District 99, Downers Grove Grade School District 58 has an elementary school building nearer to the center of the Puffer Hefty School District (the territory to be annexed) than does Woodridge School District 68;

13. Testimony, argument and comment was presented by respondent Puffer Hefty School District 69 to urge that the Puffer Hefty School District 69 not be dissolved;

14. Subsequent to the RBST's determination that the petition was proper and dissolution could not be denied; there was testimony, argument and comment presented to urge that the territory of Puffer Hefty School District 69 not be annexed to any district except Puffer Hefty School District 69;

15. No testimony; argument or comment proposed the annexation of Puffer Hefty School District 69 to any other non-dissolved district except Downers Grove Grade School District 58;

16. A community of interest (represented in part by the shared Park District and Library District and summer

school program at District 58) exists between residents of the Puffer Hefty School District 69 and Downers Grove Grade School District 58;

17. The districts involved in this petition provide satisfactory educational opportunities for their pupils and meet the standards prescribed for recognition by the State Superintendent of Education. "Neither granting nor denying the petition is likely to substantially affect the districts in meeting recognition requirements." (Secretary's exhibit 4)

18. The RBST heard testimony regarding, and will take notice of the statutory provision that provides annexation of the territory of Puffer Hefty School District 69 shall entitle Downers Grove Grade School District 58 to payments from the State Board of Education as provided in 105 ILCS 5/18. (105 ILCS 5/7-11);

19. When dissolution and annexation become effective for purposes of administration and attendance, the positions of teachers in contractual continued service to the Puffer Hefty School District 69 will be transferred to Downers Grove Grade School District 58 pursuant to the provisions of 105 ILCS 5/24-12. 105 ILCS 5/7-2a(b);

The RBST having heard testimony and received evidence in open session; having ten convened into closed session for the purpose of discussing evidence and testimony that adduced in the open hearing; and having reconvened in open session;

Appendix D

a. July 17, 2000 motion that the petition for dissolution and annexation contained the signatures of a majority of the registered voters in the District and was proper in meeting the requirements under section 7-2a(b) of the School Code; Moved by Mr. Patricelli, seconded by Ms. Scigousky. Roll call: AYES: Mr. Patricelli, Ms Scigousky, Ms. Pollastrini, Ms. Rogers. NAY- None. Mr. Mahlke, Ms. Carney, Ms. Salvato were absent and did not vote on that motion.

b. February 15, 2001, Motion that the territory of Puffer Hefty School District 69 which was the subject of the 7-2a(b) petition to dissolve be annexed into Downers Grove Grade School District 58 having been made by Mr. Patricelli, seconded by Ms. Rogers. Roll call: AYE- Mr. Patricelli, Ms. Rogers, Mr. Mahlke, Ms. Scigousky, Ms. Olson. NAY- Ms. Pollastrini. Ms. Bates was absent and did not cast a vote.

The RBST therefore orders:

1. That the petition be granted

2. That the Puffer Hefty School District 69 (DuPage County, Illinois) is dissolved pursuant to 105 ILCS 5/7-2a(b)

3. That the entire territory comprising the Puffer Hefty School District 69 (DuPage County, Illinois) be annexed to the Downers Grove Grade School District 58 (DuPage County, Illinois)

Appendix D

4. That this matter be and hereby is concluded before the Regional Board of School Trustees of DuPage County (Illinois).

Entered:

s/ R. Donald Mahlke
DuPage County Regional Board
of School Trustees

Witnessed

s/ Bernard J. DeSimone
Ex officio secretary for the
DuPage County Regional Board
of School Trustees

Dated the 22 day of February 2001

(2)

No. 03-973

Supreme Court, U.S.
FILED
JAN 27 2004
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

PUFFER-HEFTY SCHOOL DISTRICT NO. 69 AND BRUCE WEEKS,

Petitioners,

v.

DUPAGE REGIONAL BOARD OF SCHOOL TRUSTEES OF DUPAGE COUNTY, ILLINOIS, AND ITS MEMBERS, R. DONALD MAHLKE, LAURA POLLASTRINI, JOSEPH PATRICELLI, GLORIA K. SCIGOUSKY, MARTHA ROGERS, DEBRA OLSON, GWENDOLYN L. BATES, AND MERARDO J. DESIMIONE, REGIONAL SUPERINTENDENT OF THE SCHOOLS OF DUPAGE COUNTY, AND EX-OFFICIO SECRETARY OF THE REGIONAL BOARD OF SCHOOL TRUSTEES FOR DUPAGE COUNTY, THE COMMITTEE OF TEN, AND ITS MEMBERS, FRANCES D. HOLBROOK, DAVID J. SCHILLING, DUSHAN BUDIMIR, DEBRA LYNN WESLEY, WILLIAM FEHRMANN, EUNICE GIAMMONA, LORI BUDIMIR, MICHAEL WESLEY, HUGO MONTENEGRO, THERESA BREZINSKI, AND SCHOOL DISTRICT NO. 58,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT

BRIEF IN OPPOSITION FOR RESPONDENTS THE COMMITTEE OF TEN, AND ITS MEMBERS

KARL R. OTTOSEN
Counsel of Record
MAUREEN ANICHINI LEMON
OTTOSEN, TREVARTHEN, BRITZ, KELLY & COOPER, LTD.
300 S. County Farm Road, Third Floor
Wheaton, Illinois 60187
(630) 682-0085

Attorneys for Respondents The Committee of Ten, and its Members, Frances D. Holbrook, David J. Schilling, Dushan Budimir, Debra Lynn Wesley, William Fehrmann, Eunice Giammona, Lori Budimir, Michael Wesley, Hugo Montenegro, and Theresa Brezinski

TABLE OF CONTENTS

	Page
Table Of Cited Authorities	ii
Statement Of The Case	1
Reasons For Denying The Petition	1
I. Plaintiffs Do Not Have Standing To Raise The Equal Protection Claims Presented By The Petition	3
II. Section 7-2a(b) Does Not Violate The Equal Protection Clause	5
A. The Illinois Appellate Court Properly Applied The Rational Basis Test And Not The Strict Scrutiny Test In Analyzing Petitioners' Equal Protection Clause Claim	5
B. The Illinois Appellate Court Correctly Held That Section 7-2a(b) Survives The Rational Basis Test	10
III. An Expeditious And Final Resolution Of This Case Is Critical To Allow The Necessary Entities To Effectuate The School District Boundary Changes On July 1, 2004	12
Conclusion	13

TABLE OF CITED AUTHORITIES

Page

Cases:

Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252 (1977) 3

Burdick v. Takushi, 504 U.S. 428 (1992) 6

California Democratic Party v. James, 120 U.S. 2402 (2000) 9-10

Committee for Educational Rights v. Edgar, 672 N.E.2d 1178 (Ill. 1996) 10

Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 U.S. 59 (1978) 3

Evans v. Cornman, 398 U.S. 419 (1970) 7

Green v. City of Tucson, 340 F.3d 891 (9th Cir. 2003) 9

Harper v. Va. St. Bd. of Elections, 383 U.S. 663 (1966) 7

Helmig III v. John F. Kennedy Comm. Consolidated School Dist. No. 129, 610 N.E.2d 152 (Ill. App. Ct. 1993) 4

Hussey v. City of Portland, 64 F.3d 1260 (9th Cir. 1995) 8, 9

Cited Authorities

Page

Kramer v. Union Free School District 15, 395 U.S. 621 (1969) 6, 7, 8

Latham v. Board of Education, 201 N.E.2d 111 (Ill.1964) 4, 8, 10

McDonald v. Bd. of Election Comm'n, 394 U.S. 802 (1969) 7

Mid-County Future Alternatives Comm. v. City of Portland, 795 P.2d 541 (Or. 1990) 8

People v. Deathrage, 81 N.E.2d 581 (Ill. 1948) ... 8

Puffer-Hefty Sch. Dist. No. 69 v. Regional Bd. of Sch. Trustees, 789 N.E.2d 800 (Ill. App. Ct. 2003) 1

Rosario v. Rockefeller, 93 U.S. 1245 (1973) 3

Sherwood School District 88J v. Washington County Education Service District, 6 P.3d 518 (2000) .. 8

Spaulding v. Illinois Community College Board, 356 N.E.2d 339 (Ill. 1976) 8, 9, 10

Village of Schaumburg v. Doyle, 661 N.E.2d 496 (Ill. App. Ct. 1996) 3

Cited Authorities

Page

Constitutional Provisions:

United States Constitution, Amendment XIV 1, 3, 12

Statutes:

105 Ill. Comp. Stat. 5/7-1 4

105 Ill. Comp. Stat. 5/7-2a ..... *passim*

105 Ill. Comp. Stat. 5/7-7 4

105 Ill. Comp. Stat. 5/7-9 ..... 2, 12

STATEMENT OF THE CASE

On July 25, 1997, Respondents, the Committee of Ten, filed a petition seeking the dissolution of Puffer-Hefty School District No. 69 (hereinafter "Puffer-Hefty") and its annexation to Downers Grove School District No. 58. This petition was filed on behalf of 1,169 signatories, pursuant to Sections 7-2a(b) of the School Code, 105 Ill. Comp. Stat. 5/7-2a(b), because Puffer-Hefty has fewer than 5,000 residents. As of the Petition's filing on July 25, 1997, Puffer-Hefty had 1,947 registered voters. The parties stipulated that the petition contained 1,101 valid signatures at the time of its filing, 127 signatures beyond the 974 necessary to effectuate dissolution. *Puffer-Hefty Sch. Dist. No. 69 v. Regional Bd. of Sch. Trustees*, 789 N.E.2d 800, 805 (Ill. App. Ct. 2003).

REASONS FOR DENYING THE PETITION

The dual questions presented by the Petition ask whether 105 Ill. Comp. Stat. 5/7-2a(b) violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Pet. at i. Petitioners argue that the Second District Appellate Court of Illinois improperly used the rational basis test when it concluded that Section 7-2a(b) does not violate the Equal Protection clause. Petitioners further argue that Section 7-2a(b) cannot survive scrutiny under either a strict scrutiny analysis or the rational basis test.

Petitioners assert that voting is a fundamental right, and that Section 7-2a(b) infringes upon that right. Given these assumptions, Petitioners argue that Section 7-2a(b) must be subject to a strict scrutiny analysis. Petitioners do not have

standing to raise the Equal Protection claims contained in the Petition for Writ. Further, Petitioners misconstrue this Court's prior rulings regarding voting rights to support their faulty assumptions that school boundary changes must be voted upon, and that a statutory framework allowing for a school boundary change absent an election infringes upon a fundamental right to vote. The Illinois Appellate Court correctly held that no constitutional right exists that requires an election to effectuate a school boundary change. In the absence of a fundamental right or discrimination against a suspect class, the Illinois Appellate Court properly applied the rational basis test and concluded that Section 7-2a(b) does not violate the Equal Protection Clause. The Illinois Appellate Court's decision was proper in all respects, and Respondents, The Committee of Ten, respectfully urge this Honorable Court to deny the Petition for Writ of Certiorari.

If this Honorable Court denies the Petition for Writ of Certiorari before June 30, 2004, the effective date of the change in boundaries shall be July 1, 2004. 105 Ill. Comp. Stat. 5/7-9. The Committee of Ten respectfully requests this Honorable Court to expedite its ruling to allow Downers Grove School District 58 the greatest amount of time to efficiently create as smooth a transition as possible before the boundary change becomes effective on July 1, 2004.

I.

PLAINTIFFS DO NOT HAVE STANDING TO RAISE THE EQUAL PROTECTION CLAIMS PRESENTED BY THE PETITION

The Plaintiffs-Petitioners, Puffer-Hefty and Bruce Weeks, ask this Court to consider whether 105 Ill. Comp. Stat. 5/7-2a(b) violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Neither the School District nor Weeks has standing to raise this constitutional issue. As a public school district, Puffer-Hefty is not a "person" within the meaning of the equal protection provisions of the Illinois or United States Constitutions. *Village of Schaumburg v. Doyle*, 661 N.E.2d 496 (Ill. App. Ct. 1996), *appeal denied*, 667 N.E.2d 1063.

Bruce Weeks does not have standing for several reasons. First, the Petition for Writ attempts to allege an injury to residents and electors of Downers Grove School District 58. Petitioner cannot represent a class to which he does not belong. *Rosario v. Rockefeller*, 93 U.S. 1245, 1250 (1973). Because Weeks is a resident of Puffer-Hefty and not a resident of District 58, Weeks cannot represent residents of Downers Grove School District 58. All claims of an alleged injury to residents of Downers Grove School District 58 must be stricken since none of the plaintiffs are residents of District 58. Second, Weeks has failed to allege a distinct and palpable injury in fact, *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 261 (1977), or a purported injury that "fairly can be traced to the challenged action of the defendant," *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 73-4 (1978), or that the exercise of the Court's remedial powers would redress. *Id.*

The Illinois legislature possesses all powers to legislate in reference to public school matters. *Latham v. Board of Education*, 201 N.E.2d 111 (Ill. 1964). 105 Ill. Comp. Stat. 5/7-1 is one legislative method by which all Illinois school districts can be dissolved and their territory annexed to a neighboring school district. The Illinois General Assembly chose to create an alternative means of dissolution for residents of small Illinois school districts, through the enactment of 105 Ill. Comp. Stat. 5/7-2a(b). *Helmig III v. John F. Kennedy Comm. Consolidated School Dist. No. 129*, 610 N.E.2d 152 (Ill. App. Ct. 1993). Section 7-2a(b) provides for a petition process, and an administrative hearing conducted by the Regional Board of School Trustees of the county in which the school property is located to review the petition's validity.

Weeks' "injury" purportedly arises out of the fact that Section 7-2a(b) does not require an election to effectuate a school boundary change. Yet, the approval rate among registered voters required for a valid Section 7-2a(b) petition exceeds the approval rate required under the alternate Section 7-1 dissolution process. Specifically, Section 7-2a(b) requires that a majority of the registered voters sign a petition to dissolve a school district with a population of 5,000 or fewer residents. By contrast, were the question to be placed on a ballot at an election, the proposition would pass if a majority of the registered voters *who vote* at the election vote in favor of the proposition. 105 Ill. Comp. Stat. 5/7-7.7. Thus, unless every registered voter of Puffer-Hefty were to vote at an election at which the proposition were placed on the ballot, the passage rate required under Section 7-2a(b) is actually more stringent as to Puffer-Hefty residents than the passage rate required under Section 7-7.7. Even in the unlikely event that every eligible Puffer-Hefty voter were to vote in an

election, the required passage rate would be the same whether by election or petition. Thus, because Section 7-2a(b)'s requirement of being signed by a majority of the school district's registered voters is as stringent if not more stringent than the desired alternative, Weeks is not aggrieved by the operation of Section 7-2a(b). Accordingly, Weeks has no standing to challenge the validity of Section 7-2a(b) since he is unable to assert a distinct and palpable injury that can be traced to the actions of the Defendants and that could be redressed by this Court's remedial powers.

II.

SECTION 7-2a(b) DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE

The Illinois Appellate Court properly concluded that Petitioners' equal protection challenge to Section 7-2a(b) should not be analyzed under the strict scrutiny test, but should be analyzed under the rational basis test. Applying the rational basis test, the Illinois Appellate Court correctly determined that a rational basis clearly exists for allowing the dissolution of a school district based on a majority of registered voters when the school district's population is less than 5,000 residents.

A. The Illinois Appellate Court Properly Applied The Rational Basis Test And Not The Strict Scrutiny Test In Analyzing Petitioners' Equal Protection Clause Claim

Petitioners agree that a strict scrutiny analysis is applied in an equal protection case only when a deprivation of a fundamental right or discrimination against a suspect class is alleged. Pet. p. 23. Petitioners incorrectly assert that the fundamental right to vote is implicated in this case. *Id.*

This assertion is based on Petitioners' flawed understanding of several U.S. Supreme Court decisions. This Court has not directly addressed whether a constitutionally protected right to vote on local school boundary changes exists, or whether such boundary changes may occur without an election. Yet, this Court has ruled that "States do have latitude in determining whether certain public officials shall be selected by election or chosen by appointment and whether various questions shall be submitted to the voters." *Kramer v. Union Free School District 15*, 395 U.S. 621 (1969). The decision in *Kramer* clearly suggests that this Court does not consider voting in a local school boundary change to be a constitutionally protected right. Rather, a State may devise a procedure other than submission of a referendum question to voters to accomplish school boundary changes.

While the wholesale denial of the right to vote *based on class membership* is subject to a heightened scrutiny, *Burdick v. Takushi*, 504 U.S. 428, 432-34 (1992), the legislative denial of the right to vote to all individuals with respect to a particular topic is not. In *Kramer*, this Court applied strict scrutiny to a statute that limited the right to vote in certain New York school districts to owners or lessees of taxable property, and to parents or guardians of children in public schools. The Court did not hold that all residents had a right to vote, nor did the Court hold that strict scrutiny must be applied because the right to vote was at issue. Rather, the Court held that because the State opted to put a particular matter to a vote in a school district, all similarly situated residents of the same school district had to be granted an equal voice in voting. *Kramer*, 395 U.S. at 629.

Petitioners cite to *Kramer*, and additional relevant cases, *Harper v. Va. St. Bd. of Elections*, 383 U.S. 663, (1966); *accord Evans v. Cornman*, 398 U.S. 419, 422 (1970); *McDonald v. Bd. of Election Comm'n*, 394 U.S. 802, 806 (1969), Pet. p. 24, but fail to discern their meaning. Each of these cases involved a situation where the franchise had, in fact, been granted to the electorate. "Once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment." *Harper*, 383 U.S. at 665. Because the franchise was granted to the electorate in those cases, limitations on the right to vote based on class membership were subject to a heightened scrutiny. Here, by contrast, the Illinois General Assembly has decided that the dissolution of small school districts may be decided through a petition process and need not be decided by an election at all. Because Section 7-2a(b) does not allow any residents the right to vote, the franchise has not been granted to the electorate and the right to vote is not implicated.

Petitioners fail to understand that Section 7-2a(b) grants the same level of franchise to all residents within each school district with 5,000 or fewer residents. Because the Illinois General Assembly determined that no resident in a school district with fewer than 5,000 residents shall have the right to vote on the school district's dissolution if Section 7-2a(b) is invoked (". . . because the questions scheduled for the election need not have been submitted to the voters" *Kramer*, 395 U.S. at 629 n.11), ". . . each resident has, as far as is possible, an equal voice in the selections" *Id.* at 629, and a strict scrutiny analysis is not warranted.

This Court has denied certiorari in at least two cases where a federal appellate court had concluded that there is no federal constitutional right to vote on municipal annexations. *Mid-County Future Alternatives Comm. v. City of Portland*, 795 P.2d 541 (Or. 1990), *cert. denied*, 498 U.S. 999 (1990) ("There is no federal constitutional right to vote on municipal annexations."); *Hussey v. City of Portland*, 64 F.3d 1260 (9th Cir. 1995), *cert. denied*, *City of Portland v. Hussey*, 516 U.S. 1112 (1996). The rationale of these decisions, coupled with this Court's analysis in *Kramer*, lead to the conclusion that there is no federal constitutional right to vote on a school boundary change. [1]

The Illinois Appellate Court found the authorities cited by the Defendants, including *Kramer*, persuasive, and concluded that Section 7-2a(b) does not infringe on the fundamental right to vote. Pet. App. A at 12a. The Illinois Appellate Court further relied upon the Illinois Supreme Court decisions of *Spaulding v. Illinois Community College Board*, 356 N.E.2d 339 (Ill. 1976); *Latham v. Bd. of Ed. of City of Chicago*, 201 N.E.2d 111 (Ill. 1964), and *People v. Deathrage*, 81 N.E.2d 581 (Ill. 1948) (no resident of a school district has an inherent right of franchise insofar as school elections are concerned; the right to vote is purely a permissive one bestowed by legislative grace in furtherance of the policy of the legislature.)

---

1. The Court of Appeals of Oregon has applied the holding in *Kramer*, *Mid-County Future Alternatives Comm*, and *Hussey* to rule that there is no constitutional right to vote on local school boundary changes and that a constitutional challenge to a statute denying all residents of a particular jurisdiction the right to vote is subject to the rational basis test. *Sherwood School District 88J v. Washington County Education Service District*, 6 P.3d 518 (2000).

In *Spaulding*, plaintiffs challenged the constitutionality of a statute that allowed voters to have a referendum over whether to annex territory to an existing community college district, but that did not allow voters to have a referendum over whether to create a new community college district. As in the instant case, the plaintiffs claimed that the denial of their right to vote on the creation of a new district violated the Equal Protection Clause. The Illinois Supreme Court rejected this claim, recognizing that "the State's interest in education is so pervasive that it may constitutionally establish or alter school districts without any local referendum." *Spaulding*, 356 N.E.2d at 343. Because all voters residing in the territory formed into a new school district were denied the right to vote at a referendum, all voters were treated equally and none were deprived of a fundamental right. Accordingly, the Illinois Supreme Court applied the rational basis test to rule that the statute's classifications did not violate the Equal Protection Clause.

Petitioners further argue, without citing any legal authority, that strict scrutiny must be applied because the petition process lacks the 'secrecy' of a referendum. Pet. p. 22. Support for the Illinois Appellate Court's conclusion that a petition can substitute for an election is found in several federal cases, including *Green v. City of Tucson*, 340 F.3d 891 (9th Cir. 2003) (a petition process may serve as a substitute for an election to incorporate territory); and *Hussey v. City of Portland*, 64 F.3d 1260 (9th Cir. 1995), *cert. denied*, *City of Portland v. Hussey*, 516 U.S. 1112 (1996) (the written consents of voters required under a double majority annexation procedure were the constitutional equivalent of votes.). Furthermore, this Court has recognized that the interest in protecting a voter's privacy can be outweighed by other interests. *California Democratic Party*

v. James, 120 U.S. 2402 (2000) (alleged protection of a voter's privacy, among other interests, are not sufficiently compelling to justify the intrusion into a political party's associational rights). Finally, the right to privacy with respect to a vote only applies in those situations where the State legislature has granted such a right to vote. Because Illinois residents do not have an inherent right of franchise with respect to school matters, *Spaulding v. Illinois Community College Board*, 356 N.E.2d 339 (1976), no right of privacy attaches to legislative procedures that do not include the right to participate in an election.

As this discussion demonstrates, both federal and Illinois cases support the use by the Illinois Appellate Court of a rational basis analysis to review the constitutionality of Section 7-2a(b).

B. The Illinois Appellate Court Correctly Held That Section 7-2a(b) Survives The Rational Basis Test

Where a classification is reasonable and the statute is uniform in its operation on all members of the class to which it applies, there is no violation of the constitutional guarantee of equal protection of the law. *Latham*, 201 N.E.2d at 116. The Illinois Appellate Court clearly recognized that a system to dissolve a school district based on a majority of voter signatures when a school district's population is less than 5,000 residents is rationally related to the legitimate state goal of promoting local control of education economically and efficiently. *See*, *Committee for Educational Rights v. Edgar*, 672 N.E.2d 1178 (Ill. 1996). To support its conclusion, the Illinois Appellate Court noted that Illinois courts have consistently upheld the constitutionality of legislative classifications based on population. Pet. App. A at 14a.

The fact that most such cases involve large population classifications, as opposed to the smaller population classification at issue here, is immaterial and the analysis remains the same.

Section 7-2a(b) provides an efficient, alternative means to more quickly transfer students from an underpopulated school district with fewer educational opportunities due to its size, into one or more nearby school district(s). Petitioners admit that Illinois has a "disproportionately high number of small school districts" that could be impacted by Section 7-2a(b). Pet. p. 18. The Illinois Appellate Court reasonably determined that a school district with less than 5,000 residents is a school district with fewer children, less wealth and revenue, less economies of scale in its educational resources, fewer nonacademic amenities, and fewer extracurricular programs than a similarly situated school district with more than 5,000 residents. The small school district simply has too few students to offer the equality and scope of educational opportunities enjoyed by larger school districts. Even if it were the wealthiest school district in the state, a school district with fewer than 5,000 residents simply does not have enough students to maintain an eighth grade orchestra; an intramural boys' football team or baseball team. Thus, the alternative means of dissolution offered through Section 7-2a(b) is reasonable in light of the general policy of the Illinois State Board of Education to consolidate the State's numerous school districts.

Because the classification of school districts with fewer than 5,000 residents is clearly reasonable, and the statute is uniformly applied to all school districts with fewer than 5,000 residents, the Illinois Appellate Court's conclusion that Section 7-2a(b) does not violate the Equal Protection Clause

of the Fourteenth Amendment is correct, and review by this Court is unnecessary. The Illinois Supreme Court denied Petitioner's Petition for Writ of Certiorari and this Court should follow suit as there is no significant constitutional issue that warrants this Court's review.

III.

AN EXPEDITIOUS AND FINAL RESOLUTION OF THIS CASE IS CRITICAL TO ALLOW THE NECESSARY ENTITIES TO EFFECTUATE THE SCHOOL DISTRICT BOUNDARY CHANGES ON JULY 1, 2004

105 Ill. Comp. Stat. 5/7-9 establishes the effective date of a change in school district boundaries arising out of a Section 7-2a(b) petition. If the final decision of a review court becomes final between September 1 and June 30 of any school year, the changes in school boundaries for administrative and attendance purposes shall be effective as of the following July 1. Accordingly, should this Court issue a decision before June 30, 2004, the boundary changes shall take effect on July 1, 2004. Downers Grove School District 58, the school district to which the Puffer-Hefty territory has been annexed, is attempting to plan for a transition to occur on July 1, 2004. Puffer-Hefty has threatened to sue District 58 to prevent it from making any transitional plans until this Court has ruled. This places District 58 in the awkward position of "wait and see." The sooner this Court rules, the sooner District 58 may proceed without fear of litigation to prepare as smooth a transition as possible with respect to operational, curricular and financial issues for the children residing in Puffer-Hefty as they begin the 2004-2005 school year as District 58 students. For this reason, Respondents,

the Committee of Ten, respectfully requests that the Court expedite its consideration and disposition of the instant Petition for Writ of Certiorari.

CONCLUSION

For all of the foregoing reasons, Respondents respectfully request that this Honorable Court deny the Petition as expeditiously as possible.

Respectfully submitted,

KARL R. OTTOSEN
Counsel of Record
MAUREEN ANICHINI LEMON
OTTOSEN, TREVARTHEN,
BRITZ, KELLY & COOPER, LTD.
300 S. County Farm Road,
Third Floor
Wheaton, Illinois 60187
(630) 682-0085
Attorneys for Respondents
The Committee of Ten, and its
Members, Frances D. Holbrook,
David J. Schilling, Dushan
Budimir, Debra Lynn Wesley,
William Fehrmann, Eunice
Giammona, Lori Budimir,
Michael Wesley,
Hugo Montenegro,
and Theresa Brezinski